TITLE 4. STATUTES CONCERNING STATE AGENCIES THAT ARE RELEVANT TO IDEM

IC 4-3-11. INDIANA CORPORATION FOR SCIENCE AND TECHNOLOGY

IC 4-3-11-6 ---------- Consideration of recycled products

The corporation shall consider projects involving the creation of the following:

(1) Markets for products made from recycled materials.

(2) New products made from recycled materials.

[As added by: P.L.10-1990, §1.]

IC 4-4-3. DEPARTMENT OF COMMERCE (DOC)

IC 4-4-3-8 ---------- DOC: duties include developing and promoting recycling markets

(a) The department shall develop and promote programs designed to make the best use of the resources of the state so as to assure a balanced economy and continuing economic growth for Indiana and for those purposes may do the following:

(1) Cooperate with federal, state, and local governments and agencies in the coordination of programs to make the best use of the resources of the state.

(2) Receive and expend all funds, grants, gifts, and contributions of money, property, labor, interest accrued from loans made by the department, and other things of value from public and private sources, including grants from agencies and instrumentalities of the state and the federal government. The department:

(A) may accept federal grants for providing planning assistance, making grants, or providing other services or functions necessary to political subdivisions, planning commissions, or other public or private organizations;

(B) shall administer these grants in accordance with their terms; and

(C) may contract with political subdivisions, planning commissions, or other public or private organizations to carry out the purposes for which the grants were made.

(3) Direct that assistance, information, and advice regarding the duties and functions of the department be given the department by any officer, agent, or employee of the state. The head of any other state department or agency may assign one (1) or more of the department's or agency's employees to the department on a temporary basis, or may direct any division or agency under the department's or agency's supervision and control to make any special study or survey requested by the director.

(b) The department shall perform the following duties:

(1) Disseminate information concerning the industrial, commercial, governmental, educational, cultural, recreational, agricultural, and other advantages of Indiana.

(2) Plan, direct, and conduct research activities.

(3) Develop and implement industrial development programs to encourage expansion of existing industrial, commercial, and business facilities within Indiana and to encourage new industrial, commercial, and business locations within Indiana.

(4) Assist businesses and industries in acquiring, improving, and developing overseas markets and encourage international plant locations within Indiana. The director, with the approval of the governor, may establish foreign offices to assist in this function.

(5) Promote the growth of minority business enterprises by doing the following:

(A) Mobilizing and coordinating the activities, resources, and efforts of govern-

mental and private agencies, businesses, trade associations, institutions, and individuals.

(B) Assisting minority businesses in obtaining governmental or commercial financing for expansion, establishment of new businesses, or individual development projects.

(C) Aiding minority businesses in procuring contracts from governmental or private sources, or both.

(D) Providing technical, managerial, and counseling assistance to minority business enterprises.

(6) Assist in community economic development planning and the implementation of programs designed to further this development.

(7) Assist in the development and promotion of Indiana's tourist resources, facilities, attractions, and activities.

(8) Assist in the promotion and marketing of Indiana's agricultural products, and provide staff assistance to the director in fulfilling the director's responsibilities as commissioner of agriculture.

(9) Perform the following energy related functions:

(A) Assist in the development and promotion of alternative energy resources, including Indiana coal, oil shale, hydropower, solar, wind, geothermal, and biomass resources.

(B) Encourage the conservation and efficient use of energy, including energy use in commercial, industrial, residential, governmental, agricultural, transportation, recreational, and educational sectors.

(C) Assist in energy emergency preparedness.

(D) Not later than January 1, 1994, establish:

(i) specific goals for increased energy efficiency in the operations of state government and for the use of alternative fuels in vehicles owned by the state; and

(ii) guidelines for achieving the goals established under item (i).

(E) Establish procedures for state agencies to use in reporting to the department on energy issues.

(F) Carry out studies, research projects, and other activities required to:

(i) assess the nature and extent of energy resources required to meet the needs of the state, including coal and other fossil fuels, alcohol fuels produced from agricultural and forest products and resources, renewable energy, and other energy resources;

(ii) promote cooperation among government, utilities, industry, institutions of higher education, consumers, and all other parties interested in energy and recycling market development issues; and

(iii) promote the dissemination of information concerning energy and recycling market development issues.

(10) Implement any federal program delegated to the state to effectuate the purposes of this chapter.

(11) Promote the growth of small businesses by doing the following:

(A) Assisting small businesses in obtaining and preparing the permits required to conduct business in Indiana.

(B) Serving as a liaison between small businesses and state agencies.

(C) Providing information concerning business assistance programs available through government agencies and private sources.

(12) Assist the Indiana commission for agriculture and rural development in performing its functions under IC 4-4-22.

(13) Develop and promote markets for the following recyclable items:

(A) Aluminum containers.

(B) Corrugated paper.

(C) Glass containers.

(D) Magazines.

(E) Steel containers.

(F) Newspapers.

(G) Office waste paper.

(H) Plastic containers.

(I) Foam polystyrene packaging.

(J) Containers for carbonated or malt beverages that are primarily made of a combination of steel and aluminum.

(14) Produce an annual recycled products guide and at least one (1) time each year distribute the guide to the following:

(A) State agencies.

(B) The judicial department of state government.

(C) The legislative department of state government.

(D) State educational institutions (as defined in IC 20-12-0.5-1).

(E) Political subdivisions (as defined in IC 36-1-2-13).

(F) Bodies corporate and politic created by statute.

A recycled products guide distributed under this subdivision must include a description of supplies and other products that contain recycled material and information concerning the availability of the supplies and products.

(c) The department shall submit a report to the general assembly before October 1 of each year concerning the availability of and location of markets for recycled products in Indiana. The report must include the following:

(1) A priority listing of recyclable materials to be targeted for market development. The listing must be based on an examination of the need and opportunities for the marketing of the following:

(A) Paper.

(B) Glass.

(C) Aluminum containers.

(D) Steel containers.

(E) Bi-metal containers.

(F) Glass containers.

(G) Plastic containers.

(H) Landscape waste.

(I) Construction materials.

(J) Waste oil.

(K) Waste tires.

(L) Coal combustion wastes.

(M) Other materials.

(2) A presentation of a market development strategy that:

(A) considers the specific material marketing needs of Indiana; and

(B) makes recommendations for legislative action.

(3) An analysis that examines the cost and effectiveness of future market development options.

[As amended by: P.L.13-1993, §2.]

IC 4-4-3-8.1 ---------- DOC: potential environmental impact of assistance

When considering offering economic development assistance to businesses and industries, the department shall do the following:

(1) Consider the potential environmental impact that would be caused by the assistance.

(2) Give priority to businesses and industries that, as the principal activity of the businesses and industries, convert recyclable materials into useful products or create markets for products made from recycled materials.

[As added by: P.L.10-1990, §2.]

IC 4-4-10.9. INDUSTRIAL DEVELOPMENT PROJECTS

IC 4-4-10.9-11 ------- Industrial development projects: definition includes pollution control facilities and recycling market development projects

(a) Except as provided in subsection (b), "industrial development project" includes:

(1) the acquisition of land, site improvements, infrastructure improvements, buildings, or structures, rehabilitation, renovation, and enlargement of buildings and structures, machinery, equipment, furnishings, or facilities (or any combination of these), comprising or being functionally related and subordinate to any project (whether manufacturing, commercial, agricultural, environmental, or otherwise) the development or expansion of which serves the public purposes set forth in IC 4-4-11-2;

(2) educational facility projects; and

(3) child care facility projects.

(b) For purposes of the industrial development guaranty fund program, "industrial development project" includes the acquisition of land, interests in land, site improvements, infrastructure improvements (including information and high technology infrastructure (as defined in IC 4-4-8-1)), buildings, or structures, rehabilitation, renovation, and enlargement of buildings and structures, machinery, equipment, furnishings, or facilities (or any combination of these), comprising or being functionally related and subordinate to any of the following:

(1) A pollution control facility.

(2) A manufacturing enterprise.

(3) A business service enterprise involved in:

(A) computer and data processing services; or

(B) commercial testing services.

(4) A business enterprise the primary purpose of which is the operation of an education and permanent marketing center for manufacturers and distributors of robotic and flexible automation equipment.

(5) Any other business enterprise, if the use of the guaranty program creates a reasonable probability that the effect on Indiana employment will be creation or retention of at least fifty (50) jobs.

(6) An agricultural enterprise in which:

(A) the enterprise operates pursuant to a producer or growout agreement; and

(B) the output of the enterprise is processed predominantly in Indiana.

(7) A business enterprise that is required by a state, federal, or local regulatory agency to make capital expenditures to remedy a violation of a state or federal law or a local ordinance.

(8) A recycling market development project.

(9) A high growth company with high skilled jobs (as defined in IC 4-4-10.9-9.5).

[As amended by: P.L.14-2000, §9.]

IC 4-4-10.9-23 ------- Industrial development projects: pollution defined

"Pollution" means all forms of environmental pollution, including water pollution, air pollution, sewage, solid and radioactive waste, thermal pollution, radiation contamination, and noise pollution.

[As added by: P.L.20-1985, §1.]

IC 4-4-10.9-24 ------- Industrial development projects: pollution control facility defined

"Pollution control facility" means a facility for the abatement, reduction, or prevention of pollution or for the removal or treatment of any substances in materials being processed that otherwise would cause pollution when used. This includes the following:

(1) Coal washing, coal cleaning, or coal preparation facilities designed to reduce the sulfur and ash levels of Indiana coal.

(2) Coal-fired boiler facilities designed to reduce emissions while burning Indiana coal.

(3) Pollution control equipment to allow for the environmentally sound use of Indiana coal.

[As added by: P.L.20-1985, §1.]

IC 4-4-11.2. INDUSTRIAL DEVELOPMENT AUTHORITY: UNDERGROUND PETROLEUM STORAGE TANK EXCESS LIABILITY FUND

IC 4-4-11.2-1 --------- Excess liability fund: authority defined

As used in this chapter, "authority" refers to the Indiana development finance authority.
[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-2 --------- Excess liability fund: bonds defined

As used in this chapter, "bonds" means any bonds, notes, debentures, interim certificates, revenue anticipation notes, warrants, or any other evidences of indebtedness of the authority.
[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-3 --------- Excess liability fund: financial institution defined

As used in this chapter, "financial institution" means a financial institution (as defined in IC 28-1-1).
[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-4 --------- Excess liability fund: holder defined

As used in this chapter, "holder" means a person who is:

(1) the bearer of any outstanding bond or note registered to bearer or not registered; or

(2) the registered owner of any outstanding bond or note that is registered other than to bearer.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-5 --------- Excess liability fund: person defined

As used in this chapter, "person" means any individual, partnership, firm, association, joint venture, limited liability company, or corporation.
[As amended by: P.L.8-1993, §16.]

IC 4-4-11.2-6 --------- Excess liability fund: reserve fund defined

As used in this chapter, "reserve fund" means a reserve fund established under section 15 of this chapter.
[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-7 --------- Excess liability fund: authorized purposes for issuance of bonds; security

(a) The authority may issue its bonds in principal amounts that it considers necessary to provide funds for any purposes under this chapter, including the following:

(1) Providing a source of money for the underground petroleum storage tank excess liability trust fund established by IC 13-23-7-1.

(2) Payment, funding, or refunding of the principal of, or interest or redemption premiums on, bonds issued by it under this chapter whether the bonds or interest to be paid, funded, or refunded have or have not become due.

(3) Establishment or increase of reserves to secure or to pay bonds or interest on bonds and all other costs or expenses of the authority incident to and necessary or convenient to carry out the authority's corporate purposes and powers.

(b) Every issue of bonds shall be obligations of the authority payable solely out of the revenues or funds of the authority under section 15 of this chapter, subject to agreements with the holders of a particular series of bonds pledging a particular revenue or fund. Bonds may be additionally secured by a pledge of a grant or contributions from the United States, a political subdivision, or a person, or by a pledge of income or revenues, funds, or money of the authority from any source.
[As amended by: P.L.9-1996, §1.]

IC 4-4-11.2-8 --------- Excess liability fund: bonds are not governmental obligations; state will not impair bondholder rights

(a) A bond of the authority:

(1) is not a debt, liability, loan of the credit, or pledge of the faith and credit of the state or of any political subdivision;

(2) is payable solely from the money pledged or available for its payment under this chapter, unless funded or refunded by bonds of the authority; and

(3) must contain on its face a statement that the authority is obligated to pay principal and interest, and redemption premiums if any, and that the faith, credit, and taxing power of the state are not pledged to the payment of the bond.

(b) The state pledges to and agrees with the holders of the bonds issued under this chapter that the state will not:

(1) limit or restrict the rights vested in the authority to fulfill the terms of any agreement made with the holders of its bonds; or

(2) in any way impair the rights or remedies of the holders of the bonds;

until the bonds, together with the interest on the bonds, and interest on unpaid installments of interest, and all costs and expenses in connection with an action or proceeding by or on behalf of the holders, are fully met, paid, and discharged.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-9 --------- Excess liability fund: bonds are negotiable instruments

The bonds of the authority are negotiable instruments for all purposes of the Uniform Commercial Code (IC 26-1), subject only to the provisions of the bonds for registration.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-10 ------- Excess liability fund: formal bond requirements; rates of interest; mandatory redemption

(a) Bonds of the authority must be authorized by resolution of the authority, may be issued in one (1) or more series, and must:

(1) bear the date;

(2) mature at the time or times;

(3) be in the denomination;

(4) be in the form;

(5) carry the conversion or registration privileges;

(6) have the rank or priority;

(7) be executed in the manner;

(8) be payable from the sources in the medium of payment at the place inside or outside the state; and

(9) be subject to the terms of redemption;

as the resolution of the authority or the trust agreement securing the bonds provides.

(b) Bonds may be issued under this chapter without obtaining the consent of any agency of the state and without any other proceeding or condition other than the proceedings or conditions specified in this chapter.

(c) The rate or rates of interest on the bonds may be fixed or variable. Variable rates shall be determined in the manner and in accordance with the procedures set forth in the resolution authorizing the issuance of the bonds. Bonds bearing a variable rate of interest may be converted to bonds bearing a fixed rate or rates of interest, and bonds bearing a fixed rate or rates of interest may be converted to bonds bearing a variable rate of interest, to the extent and in the manner set forth in the resolution pursuant to which the bonds are issued. The interest on bonds may be payable semiannually or annually or at any other interval or intervals as may be provided in the

resolution, or the interest may be compounded and paid at maturity or at any other times as may be specified in the resolution.

(d) The bonds may be made subject to mandatory redemption by the authority at the times and under the circumstances set forth in the authorizing resolution.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-11 ------- Excess liability fund: public or private sale of bonds

Bonds of the authority may be sold at public or private sale at the price the authority determines. If bonds of the authority are to be sold at public sale, the authority shall publish notice of the sale for two (2) weeks in two (2) newspapers published and of general circulation in the city of Indianapolis.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-12 ------- Excess liability fund: periodic issuance and retirement of bonds

The authority may periodically issue its bonds under this chapter and pay and retire the principal of the bonds or pay the interest due thereon or fund or refund the bonds from proceeds of bonds, or from other funds or money of the authority available for that purpose in accordance with a contract between the authority and the holders of the bonds.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-13 ------- Excess liability fund: bond trust agreements and resolutions

(a) In the discretion of the authority, any bonds issued under this chapter may be secured by a trust agreement by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside the state.

(b) The trust agreement or the resolution providing for the issuance of the bonds may contain provisions for protecting and enforcing the rights and remedies of the holders of any such bonds as are reasonable and proper and not in violation of law.

(c) The trust agreement or resolution may set forth the rights and remedies of the holders of any bonds and of the trustee and may restrict the individual right of action by the holders.

(d) In addition to the provisions of subsections (a), (b), and (c), any trust agreement or resolution may contain other provisions the authority considers reasonable and proper for the security of the holders of any bonds.

(e) All expenses incurred in carrying out the trust agreement or resolution may be paid from revenues or assets pledged or assigned to the payment of the principal of and the interest on bonds or from any other funds available to the authority.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-14 ------- Excess liability fund: bond purchase by authority

The authority may purchase bonds of the authority out of its funds or money available for the purchase of its own bonds. The authority may hold, cancel, or resell the bonds subject to, and in accordance with, agreements with holders of its bonds. Unless cancelled, bonds so held are considered to be held for resale or transfer and the obligation evidenced by the bonds shall not be considered to be extinguished.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-15 ------- Excess liability fund: debt service and reserve funds

(a) The authority may establish and maintain a debt service fund, and if necessary, a reserve fund, for each issue of bonds in which there shall be deposited or transferred:

(1) all money appropriated by the general assembly for the purpose of the fund in accordance with section 18(a) of this chapter;

(2) all proceeds of bonds required to be deposited in the fund by terms of a contract between the authority and its holders or a resolution of the authority with respect to the proceeds of bonds;

(3) all other money appropriated by the general assembly to the funds; and

(4) any other money or funds of the authority that it decides to deposit in either fund.

(b) Subject to section 18(b) of this chapter, money in any reserve fund shall be held and applied solely to the payment of the interest on and principal of bonds of the authority as the interest and principal become due and payable and for the retirement of bonds.

(c) Money in any reserve fund in excess of the required debt service reserve, whether by reason of investment or otherwise, may be withdrawn at any time by the authority and transferred to another fund or account of the authority, subject to the provisions of any agreement with the holders of any bonds.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-16 ------- Excess liability fund: investment of money in reserve fund

Money in any reserve fund may be invested in the manner provided in the trust agreement or the resolution authorizing issuance of the bonds.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-17 ------- Excess liability fund: valuation of investments in reserve fund

For purposes of valuation, investments in the reserve fund shall be valued at par, or if purchased at less than par, at cost unless otherwise provided by resolution or trust agreement of the authority. Valuation on a particular date shall include the amount of interest then earned or accrued to that date on the money or investments in the reserve fund.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-18 ------- Excess liability fund: legislative appropriations to debt service fund

(a) In order to assure the payment of debt service on bonds of the authority issued under this chapter or maintenance of the required debt service reserve in any reserve fund, the general assembly may annually or biannually appropriate to the authority for deposit in one (1) or more of the funds the sum including particularly sums from the underground petroleum storage tank excess liability trust fund established by IC 13-23-7-1, that is necessary to pay the debt service on the bonds or to restore one (1) or more of the funds to an amount equal to the required debt service reserve. This subsection does not create a debt or liability of the state to make any appropriation.

(b) All amounts received on account of money appropriated by the state to any fund shall be held and applied in accordance with section 15(b) of this chapter. However, at the end of each fiscal year, if the amount in any fund exceeds the debt service or required debt service reserve, any amount representing earnings or income received on account of any money appropriated to the funds that exceeds the expenses of the authority for that fiscal year may be transferred to the underground petroleum storage tank excess liability trust fund.

[As amended by: P.L.9-1996, §2.]

IC 4-4-11.2-19 ------- Excess liability fund: combining of reserve funds

Subject to any agreement with its holders, the authority may combine a reserve fund established for an issue of bonds into one (1) or more reserve funds.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-20 ------- Excess liability fund: additional reserves or other funds

The authority may establish additional reserves or other funds or accounts as the authority considers necessary, desirable, or convenient to further the accomplishment of its purposes or to comply with any of its agreements or resolutions.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-21 ------- Excess liability fund: limits on use of money in funds

Unless the resolution or trust agreement authorizing the bonds provides otherwise, money or investments in a fund or account of the authority established or held for the payment of bonds shall be applied to the payment or retirement of the bonds, and to no other purpose.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-22 ------- Excess liability fund: limitations on actions to contest the validity of bonds

(a) No action to contest the validity of any bonds of the authority to be sold at public sale may be brought after the fifteenth day following the first publication of notice of the sale of the bonds. No action to contest the validity of any bond sale under this chapter may be brought after the fifth day following the bond sale.

(b) If bonds are sold at private sale, no action to contest the validity of such bonds may be brought after the fifteenth day following the adoption of the resolution authorizing the issuance of the bonds.

(c) If an action challenging the bonds of the authority is not brought within the time prescribed by subsection (a) or (b), whichever is applicable, all bonds of the authority are conclusively presumed to be fully authorized and issued under the laws of the state, and a person or a qualified entity is estopped from questioning their authorization, sale, issuance, execution, or delivery by the authority.

(d) If this chapter is inconsistent with any other law (general, special, or local), this chapter controls.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-23 ------- Excess liability fund: property of authority exempt from judicial process

All property of the authority is exempt from levy and sale by virtue of an execution and no execution or other judicial process may issue against the property. A judgment against the authority may not be a charge or lien upon its property. However, this section does not apply to or limit the rights of the holder of bonds to pursue a remedy for the enforcement of a pledge or lien given by the authority on its revenues or other money.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-24 ------- Excess liability fund: pledges of revenues

A pledge of revenues or other money made by the authority is binding from the time the pledge is made. Revenues or other money so pledged and thereafter received by the authority are immediately subject to the lien of the pledge without any further act, and the lien of a pledge is binding against all parties having claims of any kind in tort, contract, or otherwise against the authority, regardless of whether the parties have notice of the lien. Neither the resolution nor any other instrument by which a pledge is created needs to be filed or recorded except in the records of the authority.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-25 ------- Excess liability fund: receipt of money provided for the authority authorized

The chairman of the authority may receive from the United States of America or any department or agency thereof, or any state agency, including the department of environmen-

tal management, any amount of money as and when appropriated, allocated, granted, turned over, or in any way provided for the purposes of the authority or this chapter, and those amounts shall, unless otherwise directed by the federal authority, be credited to and be available to the authority.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-26 ------- Excess liability fund: undertakings of financial institution regarding deposits of the authority

A financial institution may give to the authority a good and sufficient undertaking with such sureties as are approved by the authority to the effect that the financial institution shall faithfully keep and pay over to the order of or upon the warrant of the authority or its authorized agent all those funds deposited with it by the authority and agreed interest under or by reason of this chapter, at such times or upon such demands as may be agreed with the authority or instead of these sureties, deposit with the authority or its authorized agent or a trustee or for the holders of bonds, as collateral, those securities as the authority may approve. The deposits of the authority may be evidenced by an agreement in the form and upon the terms and conditions that may be agreed upon by the authority and the financial institution.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-27 ------- Excess liability fund: authority may enter into agreements with financial institutions for rendering service

The authority may enter into agreements or contracts with a financial institution inside or outside the state as the authority considers necessary, desirable, or convenient for rendering services in connection with the care, custody, or safekeeping of securities or other investments held or owned by the authority, for rendering services in connection with the payment or collection of amounts payable as to principal or interest, and for rendering services in connection with the delivery to the authority of securities or other investments purchased by or sold by the authority, and to pay the cost of those services. The authority may also, in connection with any of the services to be rendered by a financial institution as to the custody and safekeeping of its securities or investments, require security in the form of collateral bonds, surety agreements, or security agreements in such form and amount as, the authority considers necessary or desirable.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-28 ------- Excess liability fund: bonds of authority are legal investments

Notwithstanding the restrictions of any other law, all financial institutions, investment companies, insurance companies, insurance associations, executors, administrators, guardians, trustees, and other fiduciaries may legally invest sinking funds, money, or other funds belonging to them or within their control in bonds issued under this chapter.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-29 ------- Excess liability fund: property of authority, bonds issued, proceeds and interest are exempt from all state tax except inheritance tax

All property of the authority is public property devoted to an essential public and governmental function and purpose and is exempt from all taxes and special assessments, direct or indirect, of the state or a political subdivision of the state. All bonds issued under this chapter are issued by a body corporate and public of the state, but not a state agency, and for an essential public and governmental purpose and the bonds, the interest thereon, the proceeds received by a holder from the sale of the bonds to the extent of the holder's cost of acquisition, proceeds received upon redemption prior to maturity, and proceeds received at maturity and the receipt of the interest and proceeds shall be exempt from taxation in the state for all purposes except a state inheritance tax imposed under IC 6-4.1.

[As amended by: P.L.254(ss)-1997, §2.]

IC 4-4-11.2-30 ------- Excess liability fund: bonds of authority are exempt from securities registration

Any bonds issued by the authority under this chapter are exempt from the registration and other requirements of IC 23-2-1 and any other securities registration laws.

[As added by: P.L.13-1990, §1.]

IC 4-4-11.2-31 ------- Excess liability fund: chapter supplemental

This chapter is supplemental to all other statutes governing the authority.

[As added by: P.L.13-1990, §1.]

IC 4-10-18. THE COUNTER-CYCLICAL REVENUE AND ECONOMIC STABILIZATION FUND

IC 4-10-18-12 -------- Transfer of money to the UST excess liability fund

If the amount of money in the underground petroleum storage tank excess liability fund established by IC 13-23-7-1 reaches zero (0), ten million dollars ($10,000,000) shall be transferred to the underground petroleum storage tank excess liability fund from the fund if the:

(1) underground petroleum storage tank financial assurance board recommends that the appropriation should be made; and

(2) budget committee approves the appropriation.

[As amended by: P.L.1-1996, §24.]

IC 4-21.5. ADMINISTRATIVE ORDERS AND PROCEDURES ACT (AOPA)

IC 4-21.5-1. AOPA DEFINITIONS

IC 4-21.5-1-1 --------- AOPA: applicability of definitions

The definitions in this chapter apply throughout this article.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-1-2 --------- AOPA: administrative law judge (ALJ) defined

"Administrative law judge" refers to an individual or panel of individuals acting in the capacity of an administrative law judge in a proceeding.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-1-3 --------- AOPA: agency defined

"Agency" means any officer, board, commission, department division, bureau, or committee of state government that is responsible for any stage of a proceeding under this article. Except as provided in IC 4-21.5-7, the term does not include the judicial department of state government, the legislative department of state government, or a political subdivision.

[As amended by: P.L.41-1995, §1.]

IC 4-21.5-1-4 --------- AOPA: agency action defined

"Agency action" means any of the following:

(1) The whole or a part of an order.

(2) The failure to issue an order.

(3) An agency's performance of, or failure to perform, any other duty, function, or activity under this article.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-1-5 --------- AOPA: court defined

"Court" means a circuit or superior court responsible for taking any action under this article.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-1-6 --------- AOPA: final agency action defined

"Final agency action" means:

(1) the entry of an order designated as a final order under this article; or

(2) any other agency action that disposes of all issues in a proceeding for all parties after the exhaustion of all available administrative remedies concerning the action.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-1-7 --------- AOPA: law defined

"Law" means the federal or state constitution, any federal or state statute, a rule of an agency, or a federal regulation.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-1-8 --------- AOPA: license defined

"License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by law.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-1-9 --------- AOPA: order defined

"Order" means an agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons. The term includes:

(1) a license; or

(2) a determination under IC 4-21.5-3-6(a)(3) or IC 4-21.5-3-6(a)(4).

[As amended by: P.L.42-1995, §1.]

IC 4-21.5-1-10 ------- AOPA: party defined

"Party" means:

(1) a person to whom the agency action is specifically directed; or

(2) a person expressly designated in the record of the proceeding as a party to the proceeding.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-1-11 ------- AOPA: person defined

"Person" means an individual, agency, political subdivision, partnership, corporation, limited liability company, association, or other entity of any character.

[As amended by: P.L.8-1993, §27.]

IC 4-21.5-1-12 ------- AOPA: political subdivision defined

"Political subdivision" has the meaning set forth in IC 36-1-2-13.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-1-13 ------- AOPA: proceeding defined

"Proceeding" refers to a proceeding under this article.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-1-14 ------- AOPA: rule defined

"Rule" means the whole or any part of an agency statement of general applicability that:

(1) has or is designed to have the effect of law; and

(2) implements, interprets, or prescribes:

(A) law or policy; or

(B) the organization, procedure, or practice requirements of an agency.

[As amended by: P.L.35-1987, SEC.1.]

IC 4-21.5-1-15 ------- AOPA: authority defined

"Ultimate authority" means an individual or panel of individuals in whom the final authority of an agency is vested by law or executive order.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-2. APPLICABILITY OF THE AOPA

IC 4-21.5-2-1 --------- AOPA: creates minimum procedural rights and imposes minimum procedural duties

This article creates minimum procedural rights and imposes minimum procedural duties.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-2-2 --------- AOPA: waiver of rights but not procedural duties

Except to the extent precluded by a law, a person may waive any right conferred upon that person by this article. This section does not permit the waiver of any procedural duty imposed by this article.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-2-3 --------- AOPA: agency applicability in general

This article applies to an agency, except to the extent that a statute clearly and specifically provides otherwise. This article applies (to the extent that a statute other than this article specifically applies this article) to a class of otherwise exempt orders or one (1) or more stages of an otherwise exempt proceeding.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-2-4 --------- AOPA: agencies exempted; railroad rate and tariff actions exempted [Effective until 1/1/2002]

(a) This article does not apply to any of the following agencies:

(1) The governor.

(2) The state board of accounts.

(3) The state educational institutions (as defined by IC 20-12-0.5-1).

(4) The department of workforce development.

(5) The unemployment insurance review board of the department of workforce development.

(6) The worker's compensation board.

(7) The military officers or boards.

(8) The Indiana utility regulatory commission.

(9) The department of state revenue (excluding an agency action related to the licensure of private employment agencies).

(10) The state board of tax commissioners.

(b) This article does not apply to action related to railroad rate and tariff regulation by the Indiana department of transportation.

[As amended by: P.L.21-1995, §7.]

IC 4-21.5-2-4 --------- AOPA: agencies exempted; railroad rate and tariff actions exempted [Effective 1/1/2002]

(a) This article does not apply to any of the following agencies:

(1) The governor.

(2) The state board of accounts.

(3) The state educational institutions (as defined by IC 20-12-0.5-1).

(4) The department of workforce development.

(5) The unemployment insurance review board of the department of workforce development.

(6) The worker's compensation board.

(7) The military officers or boards.

(8) The Indiana utility regulatory commission.

(9) The department of state revenue (excluding an agency action related to the licensure of private employment agencies).

(b) This article does not apply to action related to railroad rate and tariff regulation by the Indiana department of transportation.

[As amended by: P.L.198-2001, §1.]

IC 4-21.5-2-5 --------- AOPA: agency actions exempted

This article does not apply to the following agency actions:

(1) The issuance of a warrant or jeopardy warrant for the collection of taxes.

(2) A determination of probable cause or no probable cause by the civil rights commission.

(3) A determination in a factfinding conference of the civil rights commission.

(4) A personnel action, except review of a personnel action by the state employees appeals commission under IC 4-15-2 or a personnel action that is not covered by IC 4-15-2 but may be taken only for cause.

(5) A resolution, directive, or other action of any agency that relates solely to the internal policy, organization, or procedure of that agency or another agency and is not a licensing or enforcement action. Actions to which this exemption applies include the statutory obligations of an agency to approve or ratify an action of another agency.

(6) An agency action related to an offender within the jurisdiction of the department of correction.

(7) A decision of the department of commerce, the department of environmental management, the enterprise zone board, the tourist information and grant fund review committee, the Indiana development finance authority, the Indiana business modernization and technology corporation, the corporation for innovation development, the Indiana small business development corporation, or the lieutenant governor that concerns a grant, loan, bond, tax incentive, or financial guarantee.

(8) A decision to issue or not issue a complaint, summons, or similar accusation.

(9) A decision to initiate or not initiate an inspection, investigation, or other similar inquiry that will be conducted by the agency, another agency, a political subdivision, including a prosecuting attorney, a court, or another person.

(10) A decision concerning the conduct of an inspection, investigation, or other similar inquiry by an agency.

(11) The acquisition, leasing, or disposition of property or procurement of goods or services by contract.

(12) Determinations of the department of workforce development under IC 22-4-18-1(g)(1), IC 22-4-40, or IC 22-4-41.

(13) A decision under IC 9-30-12 of the bureau of motor vehicles to suspend or revoke the driver's license, a driver's permit, a vehicle title, or a vehicle registration of an individual who presents a dishonored check.

(14) An action of the department of financial institutions under IC 28-1-3.1 or a decision of the department of financial institutions to act under IC 28-1-3.1.

(15) A determination by the NVRA official under IC 3-7-11 concerning an alleged violation of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg) or IC 3-7.

(16) Imposition of a civil penalty under IC 4-20.5-6-8 if the rules of the Indiana department of administration provide an administrative appeals process.

[As amended by P.L.172-1999, §10.]

IC 4-21.5-2-6 --------- AOPA: determinations exempted [Effective until 1/1/2002]

This article does not apply to the formulation, issuance, or administrative review (but does apply to the judicial review and civil enforcement) of any of the following:

(1) Determinations by the division of family and children.

(2) Determinations by the alcohol and tobacco commission.

(3) Determinations by the office of Medicaid policy and planning concerning recipients and applicants of Medicaid. However, this article does apply to determinations by the office of Medicaid policy and planning concerning providers.

[As amended by: P.L.204-2001, §5.]

IC 4-21.5-2-6 --------- AOPA: determinations exempted [Effective 1/1/2002]

(a) This article does not apply to the formulation, issuance, or administrative review (but does, except as provided in subsection (b), apply to the judicial review and civil enforcement) of any of the following:

(1) Determinations by the division of family and children.

(2) Determinations by the Indiana alcoholic beverage commission.

(3) Determinations by the office of Medicaid policy and planning concerning recipients and applicants of Medicaid. However, this article does apply to determinations by the office of Medicaid policy and planning concerning providers.

(4) A final determination of the Indiana board of tax review.

(b) IC 4-21.5-5-12 and IC 4-21.5-5-14 do not apply to judicial review of a final determination of the Indiana board of tax review.

[As amended by: P.L.198-2001, §2.]

IC 4-21.5-3. AOPA ADJUDICATIVE PROCEEDINGS

IC 4-21.5-3-1 --------- AOPA: procedures regarding notices, motions and filings

(a) This section applies to:

(1) the giving of any notice;

(2) the service of any motion, ruling, order, or other filed item; or

(3) the filing of any document with the ultimate authority;

in an administrative proceeding under this article.

(b) Except as otherwise provided by law, a person shall serve papers by United States mail or personal service. If an agency mails or personally serves a paper, the agency shall keep a record of the time, date, and circumstances of the service.

(c) Service shall be made on a person or on the person's counsel or other authorized representative of record in the proceeding. Service on an artificial person or a person incompetent to receive service shall be made on a person allowed to receive service under the rules governing civil actions in the courts. If an ultimate authority consists of more than one (1) individual, service on that ultimate authority must be made on the chairperson or secretary of the ultimate authority. A document to be filed with that ultimate authority must be filed with the chairperson or secretary of the ultimate authority.

(d) If the current address of a person is not ascertainable, service shall be mailed to the last known address where the person resides or has a principal place of business. If the identity, address, or existence of a person is not ascertainable, or a law other than a rule allows, service shall be made by a single publication in a newspaper of general circulation in:

(1) the county in which the person resides, has a principal place of business, or has property that is the subject of the proceeding; or

(2) Marion County, if the place described in subdivision (1) is not ascertainable or the place described in subdivision (1) is outside Indiana and the person does not have a resident agent or other representative of record in Indiana.

(e) A notice given by publication must include a statement advising a person how the person may receive written notice of the proceedings.

(f) The filing of a document with an ultimate authority is complete on the earliest of the following dates that apply to the filing:

(1) The date on which the document is delivered to the ultimate authority under subsection (c).

(2) The date of the postmark on the envelope containing the document, if the document is mailed to the ultimate authority by United States mail.

(3) The date on which the document is deposited with a private carrier, as shown by a receipt issued by the carrier, if the document is sent to the ultimate authority by private carrier.

[As amended by P.L.35-1989, §.2.]

IC 4-21.5-3-2 --------- AOPA: computation of time

(a) In computing any period of time under this article, the day of the act, event, or default from which the designated period of time begins to run is not included. The last day of the computed period is to be included unless it is:

(1) a Saturday;

(2) a Sunday;

(3) a legal holiday under a state statute; or

(4) a day that the office in which the act is to be done is closed during regular business hours.

(b) A period runs until the end of the next day after a day described in subdivisions (1) through (4). If the period allowed is less than seven (7) days, intermediate Saturdays, Sundays, state holidays, and days on which the office in which the act is to be done is closed during regular business hours are excluded from the calculation.

(c) A period of time under this article that commences when a person is served with a paper, including the period in which a person may petition for judicial review, commences with respect to a particular person on the earlier of the date that:

(1) the person is personally served with the notice; or

(2) a notice for the person is deposited in the United States mail.

(d) If section 1(d) of this chapter applies, a period of time under this article commences when a notice for the person is published in a newspaper.

(e) If a notice is served through the United States mail, three (3) days must be added to a period that commences upon service of that notice.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3-3 --------- AOPA: notice of, date of effectiveness for, staying of, and compliance with, orders; quorums

(a) An agency shall give notice concerning an order under section 4, 5, 6, or 8 of this chapter. An agency shall conduct additional proceedings under this chapter if required by section 7 or 8 of this chapter. However, IC 4-21.5-4 applies to the notice and proceedings necessary for emergency and other temporary orders.

(b) Notwithstanding IC 1-1-4-1, if:

(1) a panel of individuals responsible for an agency action has a quorum of its members present, as specified by law; and

(2) a statute other than IC 1-1-4-1 does not specify the number of votes necessary to take an agency action;

the panel may take the action by an affirmative vote of a majority of the members present and voting. For the purposes of this subsection, a member abstaining on a vote is not voting on the action.

(c) An order is effective when it is issued as a final order under this chapter, except to the extent that:

(1) a different date is set by this article;

(2) a later date is set by an agency in its order; or

(3) an order is stayed.

(d) After an order becomes effective, an agency may suspend the effect of an order, in whole or in part, by staying the order under this chapter.

(e) A party to an order may be required to comply with an order only after the party has been served with the order or has actual knowledge of the order.

[As amended by: P.L.35-1987, §3.]

IC 4-21.5-3-4 --------- AOPA: §4 notice provisions

(a) Notice must be given under this section concerning the following:

(1) The grant, renewal, restoration, transfer, or denial of a license by the bureau of motor vehicles under IC 9.

(2) The grant, renewal, restoration, transfer, or denial of a noncommercial fishing or hunting license by the department of natural resources under IC 14.

(3) The grant, renewal, restoration, transfer, or denial of a license by a board described in IC 25-1-8-1.

(4) The grant, renewal, suspension, revocation, or denial of a certificate of registration under IC 25-5.2.

(5) A personnel decision by an agency.

(6) The grant, renewal, restoration, transfer, or denial of a license by the department of environmental management or the commissioner of the department under the following:

(A) Environmental management laws (as defined in IC 13-11-2-71) for the construction, installation, or modification of:

(i) sewers and appurtenant facilities, devices, or structures for the collection and transport of sewage (as defined in IC 13-11-2-200) or storm water to a storage or treatment facility or to a point of discharge into the environment; or

(ii) pipes, pumps, and appurtenant facilities, devices, or structures that are part of a public water supply (as defined in IC 13-11-2-177) and that are used to transport water to a storage or treatment facility or to distribute water to the users of the public water supply;

where a federal, state, or local governmental body has given or will give public notice and has provided or will provide an opportunity for public participation concerning the activity that is the subject of the license.

(B) Environmental management laws (as defined in IC 13-11-2-71) for the registration of a device or a piece of equipment.

(C) IC 13-17-6-1 for a person to engage in the inspection, management, and abatement of asbestos containing material.

(D) IC 13-18-11 for a person to operate a wastewater treatment plant.

(E) IC 13-15-10 for a person to operate the following:

(i) A solid waste incinerator or a waste to energy facility.

(ii) A land disposal site.

(iii) A facility described under IC 13-15-1-3 whose operation could have an adverse impact on the environment if not operated properly.

(F) IC 13-20-4 for a person to operate a municipal waste collection and transportation vehicle.

(b) When an agency issues an order described by subsection (a), the agency shall give a written notice of the order to the following persons:

(1) Each person to whom the order is specifically directed.

(2) Each person to whom a law requires notice to be given.

A person who is entitled to notice under this subsection is not a party to any proceeding resulting from the grant of a petition for review under section 7 of this chapter unless the person is designated as a party on the record of the proceeding.

(c) The notice must include the following:

(1) A brief description of the order.

(2) A brief explanation of the available procedures and the time limit for seeking administrative review of the order under section 7 of this chapter.

(3) Any information required by law.

(d) An order under this section is effective when it is served. However, if a timely and sufficient application has been made for renewal of a license described by subsection (a)(3) and review is granted under section 7 of this chapter, the existing license does not expire until the agency has disposed of the proceeding under this chapter concerning the renewal, unless a statute other than this article provides otherwise. This subsection does not preclude an agency from issuing under IC 4-21.5-4 an emergency or other temporary order with respect to the license.

(e) If a petition for review of an order described in subsection (a) is filed within the period set by section 7 of this chapter and a petition for stay of effectiveness of the order is filed by a party or another person who has a pending petition for intervention in the proceeding, an administrative law judge shall, as soon as practicable, conduct a preliminary hearing to determine whether the order should be stayed in whole or in part. The burden of proof in the preliminary hearing is on the person seeking the stay. The administrative law judge may stay the order in whole or in part. The order concerning the stay may be issued after an order described in subsection (a) becomes effective. The resulting order concerning the stay shall be served on the parties and any person who has a pending petition for intervention in the proceeding. It must include a statement of the facts and law on which it is based.

[As amended by: P.L.54-2001, §2.]

IC 4-21.5-3-5 --------- AOPA: §5 notice provisions

(a) Notice shall be given under this section concerning the following:

(1) The grant, renewal, restoration, transfer, or denial of a license not described by section 4 of this chapter.

(2) The approval, renewal, or denial of a loan, grant of property or services, bond, financial guarantee, or tax incentive.

(3) The grant or denial of a license in the nature of a variance or exemption from a law.

(4) The determination of tax due or other liability.

(5) A determination of status.

(6) Any order that does not impose a sanction or terminate a legal right, duty, privilege, immunity, or other legal interest.

(b) When an agency issues an order described in subsection (a), the agency shall give a written notice of the order to the following persons:

(1) Each person to whom the order is specifically directed.

(2) Each person to whom a law requires notice to be given.

(3) Each competitor who has applied to the agency for a mutually exclusive license, if issuance is the subject of the order and the competitor's application has not been denied in an order for which all rights to judicial review have been waived or exhausted.

(4) Each person who has provided the agency with a written request for notification of the order, if the request:

(A) describes the subject of the order with reasonable particularity; and

(B) is delivered to the agency at least seven (7) days before the day that notice is given under this section.

(5) Each person who has a substantial and direct proprietary interest in the subject of the order.

(6) Each person whose absence as a party in the proceeding concerning the order would deny another party complete relief in the proceeding or who claims an interest related to the subject of the order and is so situated that the disposition of the matter, in the person's absence, may:

(A) as a practical matter impair or impede the person's ability to protect that interest; or

(B) leave any other person who is a party to a proceeding concerning the order subject to a substantial risk of incurring multiple or otherwise inconsistent obligations by reason of the person's claimed interest.

A person who is entitled to notice under this subsection is not a party to any proceeding resulting from the grant of a petition for review under section 7 of this chapter unless the person is designated as a party in the record of the proceeding.

(c) The notice required by subsection (a) must include the following:

(1) A brief description of the order.

(2) A brief explanation of the available procedures and the time limit for seeking administrative review of the order under section 7 of this chapter.

(3) A brief explanation of how the person may obtain notices of any prehearing conferences, preliminary hearings, hearings, stays, and any orders disposing of the proceedings without intervening in the proceeding, if a petition for review is granted under section 7 of this chapter.

(4) Any other information required by law.

(d) An agency issuing an order under this section or conducting an administrative review of the order shall give notice of any:

(1) prehearing conference;

(2) preliminary hearing;

(3) hearing;

(4) stay; or

(5) order disposing of all proceedings;

concerning the order to a person notified under subsection (b) who requests these notices in the manner specified under subsection (c)(3).

(e) If a statute requires an agency to solicit comments from the public in a nonevidentiary public hearing before issuing an order described by subsection (a), the agency shall an-

nounce at the opening and the close of the public hearing how a person may receive notice of the order under subsection (b)(4).

(f) If a petition for review and a petition for stay of effectiveness of an order described in subsection (a) has not been filed, the order is effective fifteen (15) days (or any longer period during which a person may, by statute, seek administrative review of the order) after the order is served. If both a petition for review and a petition for stay of effectiveness are filed before the order becomes effective, any part of the order that is within the scope of the petition for stay is stayed for an additional fifteen (15) days. Any part of the order that is not within the scope of the petition is not stayed. The order takes effect regardless of whether the persons described by subsection (b)(5) or (b)(6) have been served. An agency shall make a good faith effort to identify and notify these persons, and the agency has the burden of persuasion that it has done so. The agency may request that the applicant for the order assist in the identification of these persons. Failure to notify any of these persons is not grounds for invalidating an order, unless an unnotified person is substantially prejudiced by the lack of notice. The burden of persuasion as to substantial prejudice is on the unnotified person.

(g) If a timely and sufficient application has been made for renewal of a license with reference to any activity of a continuing nature and review is granted under section 7 of this chapter, the existing license does not expire until the agency has disposed of a proceeding under this chapter concerning the renewal, unless a statute other than this article provides otherwise. This subsection does not preclude an agency from issuing, under IC 4-21.5-4, an emergency or other temporary order with respect to the license.

(h) On the motion of any party or other person having a pending petition for intervention in the proceeding, an administrative law judge shall, as soon as practicable, conduct a preliminary hearing to determine whether the order should be stayed. The burden of proof in the preliminary hearing is on the person seeking the stay. The administrative law judge may stay the order in whole or in part. The order concerning the stay may be issued before or after the order described in subsection (a) becomes effective. The resulting order concerning the stay shall be served on the parties, any person who has a pending petition for intervention in the proceeding, and any person who has requested notice under subsection (d). It must include a statement of the facts and law on which it is based.

[As amended by: P.L.35-1987, §4.]

IC 4-21.5-3-6 --------- AOPA: §6 notice provisions

(a) Notice shall be given under this section concerning the following:

(1) A safety order under IC 22-8-1.1.

(2) Any order that:

(A) imposes a sanction on a person or terminates a legal right, duty, privilege, immunity, or other legal interest of a person;

(B) is not described in section 4 or 5 of this chapter or IC 4-21.5-4; and

(C) by statute becomes effective without a proceeding under this chapter if there is no request for a review of the order within a specified period after the order is issued or served.

(3) A notice of program reimbursement or equivalent determination or other notice regarding a hospital's reimbursement issued by the office of Medicaid policy and planning or by a contractor of the office of Medicaid policy and planning regarding a hospital's year end cost settlement.

(4) A determination of audit findings or an equivalent determination by the office of Medicaid policy and planning or by a contractor of the office of Medicaid policy and planning arising from a Medicaid postpayment or concurrent audit of a hospital's Medicaid claims.

(5) A license revocation under:

(A) IC 24-4.5-3;

(B) IC 28-1-29;

(C) IC 28-7-5;

(D) IC 28-8-4; or

(E) IC 28-8-5.

(b) When an agency issues an order described by subsection (a), the agency shall give notice to the following persons:

(1) Each person to whom the order is specifically directed.

(2) Each person to whom a law requires notice to be given.

A person who is entitled to notice under this subsection is not a party to any proceeding resulting from the grant of a petition for review under section 7 of this chapter unless the person is designated as a party in the record of the proceeding.

(c) The notice must include the following:

(1) A brief description of the order.

(2) A brief explanation of the available procedures and the time limit for seeking administrative review of the order under section 7 of this chapter.

(3) Any other information required by law.

(d) An order described in subsection (a) is effective fifteen (15) days after the order is served, unless a statute other than this article specifies a different date or the agency specifies a later date in its order. This subsection does not preclude an agency from issuing, under IC 4-21.5-4, an emergency or other temporary order concerning the subject of an order described in subsection (a).

(e) If a petition for review of an order described in subsection (a) is filed within the period set by section 7 of this chapter and a petition for stay of effectiveness of the order is filed by a party or another person who has a pending petition for intervention in the proceeding, an administrative law judge shall, as soon as practicable, conduct a preliminary hearing to determine whether the order should be stayed in whole or in part. The burden of proof in the preliminary hearing is on the person seeking the stay. The administrative law judge may stay the order in whole or in part. The order concerning the stay may be issued after an order described in subsection (a) becomes effective. The resulting order concerning the stay shall be served on the parties and any person who has a pending petition for intervention in the proceeding. It must include a statement of the facts and law on which it is based.

[As amended by P.L.80-1998, §1.]

IC 4-21.5-3-7 --------- AOPA: petitions for review

(a) To qualify for review of a personnel action to which IC 4-15-2 applies, a person must comply with IC 4-15-2-35. To qualify for review of any other order described in section 4, 5, or 6 of this chapter, a person must petition for review in a writing that does the following:

(1) States facts demonstrating that:

(A) the petitioner is a person to whom the order is specifically directed;

(B) the petitioner is aggrieved or adversely affected by the order; or

(C) the petitioner is entitled to review under any law.

(2) Includes, with respect to determinations of notice of program reimbursement and audit findings described in section 6(a)(3) and 6(a)(4) of this chapter, a statement of issues that includes:

(A) the specific findings, action, or determination of the office of Medicaid policy and planning or of a contractor of the office of Medicaid policy and planning from which the provider is appealing;

(B) the reason the provider believes that the finding, action, or determination of the office of Medicaid policy and planning or of a contractor of the office of Medicaid policy and planning was in error; and

(C) with respect to each finding, action, or determination of the office of Medicaid policy and planning or of a contractor of the office of Medicaid policy and planning, the statutes or rules that support the provider's contentions of error.

Not more than thirty (30) days after filing a petition for review under this section, and upon a finding of good cause by the administrative law judge, a person may amend the statement of issues contained in a petition for review to add one (1) or more additional issues.

(3) Is filed:

(A) if an order described in section 4, 5, 6(a)(1) or 6(a)(2) of this chapter, with the ultimate authority for the agency issuing the order within fifteen (15) days after the person is given notice of the order or any longer period set by statute; or

(B) if a determination described in section 6(a)(3) or 6(a)(4) of this chapter, with the office of Medicaid policy and planning not more than one hundred eighty (180) days after the hospital is provided notice of the determination.

The issuance of an amended notice of program reimbursement by the office of Medicaid policy and planning does not extend the time within which a hospital must file a petition for review from the original notice of program reimbursement under clause (B), except for matters that are the subject of the amended notice of program reimbursement.

If the petition for review is denied, the petition shall be treated as a petition for intervention in any review initiated under subsection (d).

(b) If an agency denies a petition for review under subsection (a) and the petitioner is not allowed to intervene as a party in a proceeding resulting from the grant of the petition for review of another person, the agency shall serve a written notice on the petitioner that includes the following:

(1) A statement that the petition for review is denied.

(2) A brief explanation of the available procedures and the time limit for seeking administrative review of the denial under subsection (c).

(c) An agency shall assign an administrative law judge to conduct a preliminary hearing on the issue of whether a person is qualified under subsection (a) to obtain review of an order when a person requests reconsideration of the denial of review in a writing that:

(1) states facts demonstrating that the person filed a petition for review of an order described in section 4, 5, or 6 of this chapter;

(2) states facts demonstrating that the person was denied review without an evidentiary hearing; and

(3) is filed with the ultimate authority for the agency denying the review within fifteen (15) days after the notice required by subsection (b) was served on the petitioner.

Notice of the preliminary hearing shall be given to the parties, each person who has a pending petition for intervention in the proceeding, and any other person described by section 5(d) of this chapter. The resulting order must be served on the persons to whom notice of the preliminary hearing must be given and include a statement of the facts and law on which it is based.

(d) If a petition for review is granted, the petitioner becomes a party to the proceeding and the agency shall assign the matter to an administrative law judge or certify the matter to another agency for the assignment of an administrative law judge (if a statute transfers responsibility for a hearing on the matter to another agency). The agency granting the administrative review or the agency to which the matter is transferred may conduct informal proceedings to settle the matter to the extent allowed by law.

[As amended by: P.L.2-1997, §11.]

IC 4-21.5-3-8 --------- AOPA: notice provisions for agency actions not covered by §§4, 5 or 6

(a) An agency may issue a sanction or terminate a legal right, duty, privilege, immunity, or other legal interest not described by section 4, 5, or 6 of this chapter only after conducting a proceeding under this chapter. However, this subsection does not preclude an agency from issuing, under IC 4-21.5-4, an emergency or other temporary order concerning the subject of the proceeding.

(b) When an agency seeks to issue an order that is described by subsection (a), the agency shall serve a complaint upon:

(1) each person to whom any resulting order will be specifically directed; and

(2) any other person required by law to be notified.

A person notified under this subsection is not a party to the proceeding unless the person is a person against whom any resulting order will be specifically directed or the person is designated by the agency as a party in the record of the proceeding.

(c) The complaint required by subsection (b) must include the following:

(1) A short, plain statement showing that the pleader is entitled to an order.

(2) A demand for the order that the pleader seeks.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3-9 --------- AOPA: selection, withdrawal, disqualification and substitution of administrative law judges (ALJs)

(a) Except to the extent that a statute other than this article limits an agency's discretion to select an administrative law judge, the ultimate authority for an agency may:

(1) act as an administrative law judge;

(2) designate one (1) or more members of the ultimate authority (if the ultimate authority is a panel of individuals) to act as an administrative law judge; or

(3) designate one (1) or more other individuals, not necessarily employees of the agency, to act as an administrative law judge.

A designation under subdivision (2) or (3) may be made in advance of the commencement of any particular proceeding for a generally described class of proceedings or may be made for a particular proceeding. A general designation may provide procedures for the assignment of designated individuals to particular proceedings.

(b) An agency may not knowingly assign an individual to serve alone or with others as an administrative law judge who is subject to disqualification under this chapter.

(c) If the judge believes that the judge's impartiality might reasonably be questioned, or believes that the judge's personal bias, prejudice, or knowledge of a disputed evidentiary fact might influence the decision, an individual assigned to serve alone or with others as an administrative law judge shall:

(1) withdraw as the administrative law judge; or

(2) inform the parties of the potential basis for disqualification, place a brief statement of this basis on the record of the proceeding, and allow the parties an opportunity to petition for disqualification under subsection (d).

(d) Any party to a proceeding may petition for the disqualification of an individual serving alone or with others as an administrative law judge upon discovering facts establishing grounds for disqualification under this chapter. The administrative law judge assigned to the proceeding shall determine whether to grant the petition, stating facts and reasons for the determination. If the administrative law judge ruling on the disqualification issue is not the ultimate authority for the agency, the party petitioning for disqualification may petition the ultimate authority in writing for review of the ruling within ten (10) days after notice of the ruling is served. The ultimate authority shall conduct proceedings described by section 28 of this chapter to review the petition and affirm, modify, or dissolve the ruling within thirty (30) days after the petition is filed. A determination by the ultimate authority under this subsection is a final order subject to judicial review under IC 4-21.5-5.

(e) If a substitute is required for an administrative law judge who is disqualified or becomes unavailable for any other reason, the substitute must be appointed in accordance with subsection (a).

(f) Any action taken by a duly appointed substitute for a disqualified or unavailable administrative law judge is as effective as if taken by the latter.

[As amended by P.L.35-1987, §.7.]

IC 4-21.5-3-10 ------- AOPA: disqualification of administrative law judges

Any individual serving or designated to serve alone or with others as an administrative law judge is subject to disqualification for:

(1) bias, prejudice, or interest in the outcome of a proceeding;

(2) failure to dispose of the subject of a proceeding in an orderly and reasonably prompt manner after a written request by a party; or

(3) any cause for which a judge of a court may be disqualified.

Nothing in this subsection prohibits an individual who is an employee of an agency from serving as an administrative law judge.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3-11 ------- AOPA: administrative law judge ex parte communication

(a) Except as provided in subsection (b) or unless required for the disposition of ex parte matters specifically authorized by statute, an administrative law judge serving in a proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding while the proceeding is pending, with:

(1) any party;

(2) any individual who has a direct or indirect interest in the outcome of the proceeding;

(3) any individual who presided at a previous stage of the proceeding; or

(4) any individual who is prohibited from assisting the administrative law judge under section 13 of this chapter;

without notice and opportunity for all parties to participate in the communication.

(b) A member of a multimember panel of administrative law judges may communicate with other members of the panel regarding a matter pending before the panel, and any administrative law judge may receive aid from staff assistants. However, a staff assistant may not communicate to an administrative law judge any:

(1) ex parte communications of a type that the administrative law judge would be prohibited from receiving under subsection (a); or

(2) information that would furnish, augment, diminish, or modify the evidence in the record.

(c) Unless required for the disposition of ex parte matters specifically authorized by statute, a person described by subsection (a)(1), (a)(2), (a)(3), or (a)(4) may not communicate, directly or indirectly, in connection with any issue in that proceeding while the proceeding is pending, with any person serving as administrative law judge without notice and opportunity for all parties to participate in the communication.

(d) If, before serving as administrative law judge in a proceeding, an individual receives an ex parte communication of a type that would not properly be received while serving, the individual, promptly after starting to serve, shall disclose the communication in the manner prescribed in subsection (e).

(e) An administrative law judge who receives an ex parte communication in violation of this section shall:

(1) place on the record of the pending matter all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each individual from whom the administrative law judge received an ex parte communication; and

(2) advise all parties that these matters have been placed on the record.

Any person described by subsection (a)(1), (a)(2), (a)(3), or (a)(4) shall be allowed to rebut a charge of wrongful ex parte communication upon requesting the opportunity for rebuttal within fifteen (15) days after notice of the communication.

(f) If necessary to eliminate the effect of an ex parte communication received in violation of this section, an administrative law judge who receives the communication may be disqualified and the portions of the record pertaining to the communication may be corrected, modified, or preserved by protective order.

(g) A violation of this section is subject to the sanctions under sections 36 and 37 of this chapter.

[As amended by P.L.35-1987, §8.]

IC 4-21.5-3-12 ------- AOPA: disqualification and sanction of an administrative law judge

An administrative law judge who:

(1) comments publicly, except as to hearing schedules or procedures, about pending or impending proceedings; or

(2) engages in financial or business dealings that tend to:

(A) reflect adversely on the administrative law judge's impartiality;

(B) interfere with the proper performance of the administrative law judge's duties;

(C) exploit the administrative law judge's position; or

(D) involve the administrative law judge in frequent financial or business dealings with attorneys or other persons who are likely to come before the administrative law judge;

is subject to disqualification. A violation of this section is subject to the sanctions under sections 36 and 37 of this chapter.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3-13 ------- AOPA: eligibility of persons who have served in other roles in a proceeding to serve as administrative law judge; sanctions

(a) An individual who has served as investigator, prosecutor, or advocate in a proceeding or in its preadjudicative stage may not serve as an administrative law judge or assist or advise the administrative law judge in the same proceeding.

(b) An individual who is subject to the authority, direction, or discretion of an individual who has served as investigator, prosecutor, or advocate in a proceeding or in its preadjudicative stage may not serve as an administrative law judge or assist or advise the administrative law judge in the same proceeding.

(c) An individual who has made a determination of probable cause or other equivalent preliminary determination in a proceeding may serve as an administrative law judge or assist or advise the administrative law judge in the same proceeding, unless a party demonstrates grounds for disqualification under section 10 of this chapter.

(d) An individual may serve as an administrative law judge or a person presiding under sections 28, 29, 30, and 31 of this chapter at successive stages of the same proceeding, unless a party demonstrates grounds for disqualification under section 10 of this chapter.

(e) A violation of this section is subject to the sanctions under sections 36 and 37 of this chapter.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3-14 ------- AOPA: record of proceedings; motions based on facts not in the record; affirmative defenses

(a) An administrative law judge conducting a proceeding shall keep a record of the administrative law judge's proceedings under this article.

(b) If a motion is based on facts not otherwise appearing in the record for the proceeding, the administrative law judge may hear the matter on affidavits presented by the respective parties or the administrative law judge may direct that the matter be heard wholly or partly on oral testimony or depositions.

(c) At each stage of the proceeding, the agency or other person requesting that an agency take action or asserting an affirmative defense specified by law has the burden of persuasion and the burden of going forward with the proof of the request or affirmative defense. Before the hearing on which the party intends to assert it, a party shall, to the extent possible, disclose any affirmative defense specified by law on which the party intends to rely. If a prehearing conference is held in the proceeding, a party notified of the conference shall disclose the party's affirmative defense in the conference.

[As amended by: P.L.35-1987, §9.]

IC 4-21.5-3-15 ------- AOPA: participation of a party in person and by counsel or another representative

(a) Any party may participate in a proceeding in person or, if the party is not an individual or is incompetent to participate, by a duly authorized representative.

(b) Whether or not participating in person, any party may be advised and represented at the party's own expense by counsel or, unless prohibited by law, by another representative.

[As amended by: P.L.33-1989, §3.]

IC 4-21.5-3-16 ------- AOPA: interpreters

(a) A person who:

(1) cannot speak or understand the English language or who because of hearing, speaking, or other impairment has difficulty in communicating with other persons; and

(2) is a party or witness in any proceeding under this article;

is entitled to an interpreter to assist the person throughout the proceeding under this article.

(b) The interpreter may be retained by the person or may be appointed by the agency before which the proceeding is pending. If an interpreter is appointed by the agency, the fee for the services of the interpreter shall be set by the agency. The fee shall be paid from any funds available to the agency or be paid in any other manner ordered by the agency.

(c) Any agency may inquire into the qualifications and integrity of any interpreter and may disqualify any person from serving as an interpreter.

(d) Every interpreter for another person in a proceeding shall take the following oath:

Do you affirm, under penalties of perjury, that you will justly, truly, and impartially interpret to _____ the oath about to be administered to him (her), the questions that may be asked him (her), and the answers that he (she) shall give to the questions, relative to the cause now under consideration before this agency?

(e) IC 35-44-2-1 concerning perjury applies to an interpreter.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3-17 ------- AOPA: filings and other submissions, notices and orders

(a) The administrative law judge, at appropriate stages of a proceeding, shall give all parties full opportunity to file pleadings, motions, and objections and submit offers of settlement.

(b) The administrative law judge, at appropriate stages of a proceeding, may give all parties full opportunity to file briefs, proposed findings of fact, and proposed orders.

(c) A party shall serve copies of any filed item on all parties.

(d) The administrative law judge shall serve copies of all notices, orders, and other papers generated by the administrative law judge on all parties. The administrative law judge shall give notice of preliminary hearings, prehearing conferences, hearings, stays, and orders disposing of the proceeding to persons described by section 5(d) of this chapter.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3-18 ------- AOPA: notices of prehearing conferences

(a) The administrative law judge for the hearing, subject to the agency's rules, may, on the administrative law judge's own motion, and shall, on the motion of a party, conduct a prehearing conference. The administrative law judge may deny a motion for a prehearing conference if the administrative law judge has previously conducted a prehearing conference in the proceeding.

(b) This section and section 19 of this chapter apply if the conference is conducted.

(c) The administrative law judge for the prehearing conference shall set the time and place of the conference and give reasonable written notice to the following:

(1) All parties.

(2) All persons who have filed written petitions to intervene in the matter.

(3) All persons entitled to notice under any law.

(d) The initial prehearing conference notice in a proceeding must include the following:

(1) The names and mailing addresses of all known parties and other persons to whom notice is being given by the administrative law judge.

(2) The names and mailing addresses of all publications used to provide notice under this section.

(3) The name, official title, and mailing address of any counsel or employee who has been designated to appear for the agency and a telephone number through which the counsel or employee can be reached.

(4) The official file or other reference number, the name of the proceeding, and a general description of the subject matter.

(5) A statement of the time, place, and nature of the prehearing conference.

(6) A statement of the legal authority and jurisdiction under which the prehearing conference and the hearing are to be held.

(7) The name, official title, and mailing address of the administrative law judge for the prehearing conference and a telephone number through which information concerning hearing schedules and procedures may be obtained.

(8) A statement that a party who fails to attend or participate in a prehearing conference, hearing, or other later stage of the proceeding may be held in default or have a proceeding dismissed under section 24 of this chapter.

(e) Any subsequent prehearing conference notice in the proceeding may omit the information described in subsections (d)(1), (d)(2), (d)(3), (d)(6), and (d)(8).

(f) Any notice under this section may include any other matters that the administrative law judge considers desirable to expedite the proceedings.

[As amended by: P.L.35-1987, §10.]

IC 4-21.5-3-19 ------- AOPA: procedures for prehearing conferences

(a) This section and section 18 of this chapter apply to prehearing conferences.

(b) To expedite a decision on pending motions and other issues, the administrative law judge may conduct all or part of the prehearing conference by telephone, television, or other electronic means if each participant in the conference has an opportunity:

(1) to participate in;

(2) to hear; and

(3) if technically feasible, to see;

the entire proceeding while it is taking place.

(c) The administrative law judge shall conduct the prehearing conference, as may be appropriate, to deal with such matters as the following:

(1) Resolution of the issues in the proceeding under section 23 of this chapter.

(2) Exploration of settlement possibilities.

(3) Preparation of stipulations.

(4) Clarification of issues.

(5) Rulings on identity and limitation of the number of witnesses.

(6) Objections to proffers of evidence.

(7) A determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form.

(8) The order of presentation of evidence and cross-examination.

(9) Rulings regarding issuance of subpoenas, discovery orders, and protective orders.

(10) Such other matters as will promote the orderly and prompt conduct of the hearing.

The administrative law judge shall issue a prehearing order incorporating the matters determined at the prehearing conference.

(d) If a prehearing conference is not held, the administrative law judge for the hearing may issue a prehearing order, based on the pleadings, to regulate the conduct of the proceedings.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3-20 ------- AOPA: notices of hearings

(a) The administrative law judge for the hearing shall set the time and place of the hearing and give reasonable written notice to all parties and to all persons who have filed written petitions to intervene in the matter. Unless a shorter notice is required to comply with any law or is stipulated by all parties and persons filing written requests for intervention, an agency shall give at least five (5) days notice of the hearing.

(b) The notice must include a copy of any prehearing order rendered in the matter.

(c) To the extent not included in a prehearing order accompanying it the initial hearing notice in a proceeding must include the following:

(1) The names and mailing addresses of all parties and other persons to whom notice is being given by the administrative law judge.

(2) The name, official title, and mailing address of any counsel or employee who has been designated to appear for the agency and a telephone number through which the counsel or employee can be reached.

(3) The official file or other reference number, the name of the proceeding, and a general description of the subject matter.

(4) A statement of the time, place, and nature of the hearing.

(5) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(6) The name, official title, and mailing address of the administrative law judge and a telephone number through which information concerning hearing schedules and procedures may be obtained.

(7) A statement of the issues involved and, to the extent known to the administrative law judge, of the matters asserted by the parties.

(8) A statement that a party who fails to attend or participate in a prehearing conference, hearing, or other later stage of the proceeding may be held in default or have a proceeding dismissed under section 24 of this chapter.

(d) Subsequent hearing notices in the proceeding may omit the information described in subsections (c)(1), (c)(2), (c)(5), and (c)(8).

(e) Any notice under this section may include any other matters the administrative law judge considers desirable to expedite the proceedings.

(f) The administrative law judge shall give notice to persons other than parties and petitioners for intervention who are entitled to notice under any law. Notice under this subsection may include all types of information provided in subsections (a) through (e) or may consist of a brief statement indicating:

(1) the subject matter, parties, time, place, and nature of the hearing;

(2) the manner in which copies of the notice to the parties may be inspected and copied;

(3) the name of the administrative law judge; and

(4) a telephone number through which information concerning proceeding hearing schedules and procedures may be obtained.

[As amended by: P.L.35-1987, §11.]

IC 4-21.5-3-21 ------- AOPA: petitions for intervention

(a) Before the beginning of the hearing on the subject of the proceeding, the administrative law judge shall grant a petition for intervention in a proceeding and identify the petitioner in the record of the proceeding as a party if:

(1) the petition:

(A) is submitted in writing to the administrative law judge, with copies mailed to all parties named in the record of the proceeding; and

(B) states facts demonstrating that a statute gives the petitioner an unconditional right to intervene in the proceeding; or

(2) the petition:

(A) is submitted in writing to the administrative law judge, with copies mailed to all parties named in the record of the proceeding, at least three (3) days before the hearing; and

(B) states facts demonstrating that the petitioner is aggrieved or adversely affected by the order or a statute gives the petitioner a conditional right to intervene in the proceeding.

(b) The administrative law judge, at least twenty-four (24) hours before the beginning of the hearing, shall issue an order granting or denying each pending petition for intervention.

(c) After the beginning of the hearing on the subject of the proceeding, but before the close of evidence in the hearing, anyone may be permitted to intervene in the proceeding if:

(1) a statute confers a conditional right to intervene or an applicant's claim or defense and the main action have a question of law or fact in common; and

(2) the administrative law judge determines that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

In exercising its discretion, the administrative law judge shall consider whether the intervention will unduly delay or prejudice the adjudication of the legal interests of any of the parties.

(d) An order granting or denying a petition for intervention must specify any condition and briefly state the reasons for the order. The administrative law judge may modify the order at any time, stating the reasons for the modification. The administrative law judge shall promptly give notice of an order granting, denying, or modifying intervention to the petitioner for intervention and to all parties.

[As amended by: P.L.35-1987, §12.]

IC 4-21.5-3-22 ------- AOPA: subpoenas, discovery and protective orders

(a) The administrative law judge at the request of any party or an agency shall, and upon the administrative law judge's own motion may, issue:

(1) subpoenas;

(2) discovery orders; and

(3) protective orders;

in accordance with the rules of procedure governing discovery, depositions, and subpoenas in civil actions in the courts.

(b) The party seeking the order shall serve the order in accordance with these rules of procedure. If ordered by the administrative law judge, the sheriff in the county in which the order is to be served shall serve the subpoena, discovery order, or protective order.

(c) Subpoenas and orders issued under this section may be enforced under IC 4-21.5-6.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3-23 ------- AOPA: motions for summary judgment

(a) A party may, at any time after a matter is assigned to an administrative law judge, move for a summary judgment in the party's favor as to all or any part of the issues in a proceeding. The motion must be supported with affidavits or other evidence permitted under this section and set forth specific facts showing that there is not a genuine issue in dispute.

(b) The motion must be served at least five (5) days before the time fixed for the hearing on the motion. The adverse party may serve opposing affidavits before the day of hearing. The administrative law judge may direct the parties to give oral argument on the motion. The judgment sought shall be rendered immediately if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits and testimony, if any, show that a genuine issue as to any material fact does not exist and that the moving party is entitled to a judgment as a matter of law. A summary judgment may be rendered upon fewer than all the issues or claims (such as the issue of penalties alone) although there is a genuine issue as to damages or liability, as the case may be. A summary judgment upon fewer than all the issues involved in a proceeding or with respect to fewer than all the claims or parties is not a final order. The administrative law judge shall designate the issues or claims upon which the judge finds no genuine issue as to any material facts. Summary judgment may not be granted as a matter of course because the opposing party fails to offer opposing affidavits or evidence, but the administrative law judge shall make a determination from the affidavits and testimony offered upon the matters placed in issue by the pleadings or the evidence. If it appears from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the administrative law judge may make any order that is just.

(c) If on motion under this section no order is rendered upon the whole case or for all the relief asked and a hearing is necessary, the administrative law judge at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating any person, shall if practicable ascertain:

(1) what material facts exist without substantial controversy; and

(2) what material facts are actually and in good faith controverted.

The administrative law judge shall then make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing further proceedings in the action as are just. Upon the hearing of the action, the facts specified are established in the judge's order under this subsection.

(d) Supporting and opposing affidavits must:

(1) be made on personal knowledge;

(2) set forth facts that are admissible in evidence; and

(3) show affirmatively that the affiant is competent to testify to the matters stated in the affidavit.

(e) The administrative law judge may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, further affidavits, or testimony of witnesses.

(f) If a motion for summary judgment is made and supported under this section, an adverse party may not rely upon the mere allegations or denials made in the adverse party's pleadings as a response to the motion. The adverse party shall respond to the motion with affidavits or other evidence permitted under this section and set forth specific facts showing that there is a genuine issue in dispute. If the adverse party does not respond as required by this subsection, the administrative law judge may enter summary judgment against the adverse party.

[As amended by: P.L.5-1988, §27.]

IC 4-21.5-3-24 ------- AOPA: default and dismissal orders

(a) At any stage of a proceeding, if a party fails to:

(1) file a responsive pleading required by statute or rule;

(2) attend or participate in a prehearing conference, hearing, or other stage of the proceeding; or

(3) take action on a matter for a period of sixty (60) days, if the party is responsible for taking the action;

the administrative law judge may serve upon all parties written notice of a proposed default or dismissal order, including a statement of the grounds.

(b) Within seven (7) days after service of a proposed default or dismissal order, the party against whom it was issued may file a written motion requesting that the proposed default order not be imposed and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the administrative law judge may adjourn the proceedings or conduct them without the participation of the party against whom a proposed default order was issued, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings.

(c) If the party has failed to file a written motion under subsection (b), the administrative law judge shall issue the default or dismissal order. If the party has filed a written motion under subsection (b), the administrative law judge may either enter the order or refuse to enter the order.

(d) After issuing a default order, the administrative law judge shall conduct any further proceedings necessary to complete the proceeding without the participation of the party in default and shall determine all issues in the adjudication, including those affecting the defaulting party. The administrative law judge may conduct proceedings in accordance with section 23 of this chapter to resolve any issue of fact.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3-25 ------- AOPA: conduct of hearing by administrative law judge

(a) This section and section 26 of this chapter govern the conduct of any hearing held by an administrative law judge.

(b) The administrative law judge shall regulate the course of the proceedings in conformity with any prehearing order and in an informal manner without recourse to the technical, common law rules of evidence applicable to civil actions in the courts.

(c) To the extent necessary for full disclosure of all relevant facts and issues, the administrative law judge shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by a limitation under subsection (d) or by the prehearing order.

(d) The administrative law judge may, after a prehearing order is issued under section 19 of this chapter, impose conditions upon a party necessary to avoid unreasonably burdensome or repetitious presentations by the party, such as the following:

(1) Limiting the party's participation to designated issues in which the party has a particular interest demonstrated by the petition.

(2) Limiting the party's use of discovery, cross-examination, and other procedures so as to promote the orderly, prompt, and just conduct of the proceeding.

(3) Requiring two (2) or more parties to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

If a person is allowed to intervene in the proceeding after the commencement of a hearing under this section, the administrative law judge may prohibit the intervener from recalling any witness who has been heard or reopening any matter that has been resolved, unless the intervener did not receive a notice required by this chapter or the intervener presents facts that demonstrate that fraud, perjury, or an abuse of discretion has occurred. Any proceedings conducted before the giving of a notice required by this chapter are voidable upon the motion of the party who failed to receive the notice.

(e) The administrative law judge may administer oaths and affirmations and rule on any offer of proof or other motion.

(f) The administrative law judge may give nonparties an opportunity to present oral or written statements. If the administrative law judge proposes to consider a statement by a nonparty, the judge shall give all parties an opportunity to challenge or rebut it and, on motion of any party, the judge shall require the statement to be given under oath or affirmation.

(g) The administrative law judge shall have the hearing recorded at the agency's expense. The agency is not required, at its expense, to prepare a transcript, unless required to do so by law. Any party, at the party's expense, may cause a reporter approved by the agency to prepare a transcript from the agency's record, or cause additional recordings to be made during the hearing if the making of the additional recordings does not cause distraction or disruption. Notwithstanding IC 5-14-3-8, an agency may charge a person who requests that an agency provide a transcript (other than for judicial review under IC 4-21.5-5-13) the reasonable costs of preparing the transcript.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3-26 ------- AOPA: more on conduct of hearing by administrative law judge

(a) This section and section 25 of this chapter govern the conduct of any hearing conducted by an administrative law judge. Upon proper objection, the administrative law judge shall exclude evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts. In the absence of proper objection, the administrative law judge may exclude objectionable evidence. The administrative law judge may admit hearsay evidence. If not objected to, the hearsay evidence may form the basis for an order. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting order may not be based solely upon the hearsay evidence.

(b) All testimony of parties and witnesses must be made under oath or affirmation.

(c) Statements presented by nonparties in accordance with section 25 of this chapter may be received as evidence.

(d) Any part of the evidence may be received in written form if doing so will expedite the hearing without substantial prejudice to the interests of any party.

(e) Documentary evidence may be received in the form of a copy or excerpt. Upon request, parties shall be given an opportunity to compare the copy with the original if available.

(f) Official notice may be taken of the following:

(1) Any fact that could be judicially noticed in the courts.

(2) The record of other proceedings before the agency.

(3) Technical or scientific matters within the agency's specialized knowledge.

(4) Codes or standards that have been adopted by an agency of the United States or this state.

(g) Parties must be:

(1) notified before or during the hearing, or before the issuance of any order that is based in whole or in part on facts or material noticed under subsection (f), of the specific facts or material noticed, and the source of the facts or material noticed, including any staff memoranda and data; and

(2) afforded an opportunity to contest and rebut the facts or material noticed under subsection (f).

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3-27 ------- AOPA: requirements for order issued by administrative law judge

(a) If the administrative law judge is the ultimate authority for the agency, the ultimate authority's order disposing of a proceeding is a final order. If the administrative law judge is not the ultimate authority, the administrative law judge's order disposing of the proceeding becomes a final order when affirmed under section 29 of this chapter. Regardless of whether the order is final, it must comply with this section.

(b) This subsection applies only to an order not subject to subsection (c). The order must include, separately stated, findings of fact for all aspects of the order, including the remedy prescribed and, if applicable, the action taken on a petition for stay of effectiveness. Findings of ultimate fact must be accompanied by a concise statement of the underlying basic facts of record to support the findings. The order must also include a statement of the available procedures and time limit for seeking administrative review of the order (if administrative review is available).

(c) This subsection applies only to an order of the ultimate authority entered under IC 13, IC 14, or IC 25. The order must include separately stated findings of fact and, if a final order, conclusions of law for all aspects of the order, including the remedy prescribed and, if applicable, the action taken on a petition for stay of effectiveness. Findings of ultimate fact must be accompanied by a concise statement of the underlying basic facts of record to support the findings. Conclusions of law must consider prior final orders (other than negotiated orders) of the ultimate authority under the same or similar circumstances if those prior final orders are raised on the record in writing by a party and must state the reasons for deviations from those prior orders. The order must also include a statement of the available procedures and time limit for seeking administrative review of the order (if administrative review is available).

(d) Findings must be based exclusively upon the evidence of record in the proceeding and on matters officially noticed in that proceeding. Findings must be based upon the kind of evidence that is substantial and reliable. The administrative law judge's experience, technical competence, and specialized knowledge may be used in evaluating evidence.

(e) A substitute administrative law judge may issue the order under this section upon the record that was generated by a previous administrative law judge.

(f) The administrative law judge may allow the parties a designated amount of time after conclusion of the hearing for the submission of proposed findings.

(g) An order under this section shall be issued in writing within ninety (90) days after conclusion of the hearing or after submission of proposed findings in accordance with subsection (f), unless this period is waived or extended with the written consent of all parties or for good cause shown.

(h) The administrative law judge shall have copies of the order under this section delivered to each party and to the ultimate authority for the agency (if it is not rendered by the ultimate authority).

[As amended by: P.L.2-1998, §10.]

IC 4-21.5-3-28 ------- AOPA: proceedings when administrative law judge order is subject to review by ultimate authority

(a) This section applies to proceedings under sections 29, 30, and 31 of this chapter.

(b) The ultimate authority or its designee shall conduct proceedings to issue a final order. A designee may be selected in advance of the commencement of any particular proceeding for a generally described class of proceedings or may be selected for a particular proceeding. A general designation may provide procedures for the assignment of designated individuals to particular proceedings.

(c) Any individual serving alone or with others in a proceeding may be disqualified for any of the reasons that an administrative law judge may be disqualified. The procedures in section 9 of this chapter apply to the disqualification and substitution of the individual.

(d) Motions and petitions submitted by a party to the ultimate authority shall be served on each party to the proceeding and to any person described by section 5(d) of this chapter.

(e) In the conduct of its proceedings, the ultimate authority or its designee shall afford each party an opportunity to present briefs. The ultimate authority or its designee may:

(1) afford each party an opportunity to present oral argument;

(2) have a transcript prepared, at the agency's expense, of any portion of the record of a proceeding that the ultimate authority or its designee considers necessary;

(3) exercise the powers of an administrative law judge to hear additional evidence under sections 25 and 26 of this chapter; or

(4) allow nonparties to participate in a proceeding in accordance with section 25 of this chapter.

Sections 15 and 16 of this chapter concerning representation and interpreters apply to the proceedings of the ultimate authority or its designee.

(f) Notices and orders of the ultimate authority or its designee shall be served on all parties and all other persons who have requested notice under section 5 of this chapter.

(g) The final order of the ultimate authority or its designee must:

(1) identify any differences between the final order and the nonfinal order issued by the administrative law judge under section 27 of this chapter;

(2) include findings of fact meeting the standards of section 27 of this chapter or incorporate the findings of fact in the administrative law judge's order by express reference to the order; and

(3) briefly explain the available procedures and time limit for seeking administrative review of the final order by another agency under section 30 of this chapter (if any is available).

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3-29 ------- AOPA: more on proceedings when administrative law judge order is subject to review by ultimate authority

(a) This section does not apply if the administrative law judge issuing an order under section 27 of this chapter is the ultimate authority for the agency.

(b) After an administrative law judge issues an order under section 27 of this chapter, the ultimate authority or its designee shall issue a final order:

(1) affirming;

(2) modifying; or

(3) dissolving;

the administrative law judge's order. The ultimate authority or its designee may remand the matter, with or without instructions, to an administrative law judge for further proceedings.

(c) In the absence of an objection or notice under subsection (d) or (e), the ultimate authority or its designee shall affirm the order.

(d) To preserve an objection to an order of an administrative law judge for judicial review, a party must not be in default under this chapter and must object to the order in a writing that:

(1) identifies the basis of the objection with reasonable particularity; and

(2) is filed with the ultimate authority responsible for reviewing the order within fifteen (15) days (or any longer period set by statute) after the order is served on the petitioner.

(e) Without an objection under subsection (d), the ultimate authority or its designee may serve written notice of its intent to review any issue related to the order. The notice shall be served on all parties and all other persons described by section 5(d) of this chapter. The notice must identify the issues that the ultimate authority or its designee intends to review.

(f) A final order disposing of a proceeding or an order remanding an order to an administrative law judge for further proceedings shall be issued within sixty (60) days after the latter of:

(1) the date that the order was issued under section 27 of this chapter;

(2) the receipt of briefs; or

(3) the close of oral argument;

unless the period is waived or extended with the written consent of all parties or for good cause shown.

(g) After remand of an order under this section to an administrative law judge, the judge's order is also subject to review under this section.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3-30 ------- AOPA: proceedings where an agency may review the final order of another agency

If, under a statute, an agency may review the final order of another agency, the review shall be treated as if it was a continuous proceeding before a single agency. For the purposes of this review and the application of section 3 of this chapter concerning the effectiveness of an order, a final order of the first agency shall be treated as a nonfinal order of an administrative law judge, and the second agency shall review the order under section 29 of this chapter. To preserve an issue for judicial review, a party must comply with section 29(d) of this chapter before the second agency. The ultimate authority for the second agency or its designee may conduct proceedings under section 31 of this chapter.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3-31 ------- AOPA: modification of final order by agency; petitions for stay or rehearing; tolling of time periods

(a) An agency has jurisdiction to modify a final order under this section before the earlier of the following:

(1) Thirty (30) days after the agency has served the final order under section 27, 29, or 30 of this chapter.

(2) Another agency assumes jurisdiction over the final order under section 30 of this chapter.

(3) A court assumes jurisdiction over the final order under IC 4-21.5-5.

(b) A party may petition the ultimate authority for an agency for a stay of effectiveness of a final order. The ultimate authority or its designee may, before or after the order becomes effective, stay the final order in whole or in part.

(c) A party may petition the ultimate authority for an agency for a rehearing of a final order. The ultimate authority or its designee may grant a petition for rehearing only if the petitioning party demonstrates that:

(1) the party is not in default under this chapter;

(2) newly discovered material evidence exists; and

(3) the evidence could not, by due diligence, have been discovered and produced at the hearing in the proceeding.

The rehearing may be limited to the issues directly affected by the newly discovered evidence. If the rehearing is conducted by a person other than the ultimate authority, section 29 of this chapter applies to review of the order resulting from the rehearing.

(d) Clerical mistakes and other errors resulting from oversight or omission in a final order or other part of the record of a proceeding may be corrected by an ultimate authority or its designee on the motion of any party or on the motion of the ultimate authority or its designee.

(e) An action of a petitioning party or an agency under this section neither tolls the period in which a party may object to a second agency under section 30 of this chapter nor tolls the period in which a party may petition for judicial review under IC 4-21.5-5. However, if a rehearing is granted under subsection (c), these periods are tolled and a new period begins on the date that a new final order is served.

[As amended by P.L.35-1987, §14.]

IC 4-21.5-3-32 ------- AOPA: availability of written final orders; indexing; value as precedent

(a) Each agency shall make all written final orders available for public inspection and copying under IC 5-14-3. The agency shall index final orders that are issued after June 30, 1987, by name and subject. An agency shall index an order issued before July 1, 1987, if a person submits a written request to the agency that the order be indexed. An agency shall delete from these orders identifying details to the extent required by IC 5-14-3 or other law. In each case, the justification for the deletion must be explained in writing and attached to the order.

(b) An agency may not rely on a written final order as precedent to the detriment of any person until the order has been made available for public inspection and indexed in the manner described in subsection (a). However, this subsection does not apply to any person who has actual timely knowledge of the order. The burden of proving that knowledge is on the agency.

[As amended by P.L.35-1987, §15.]

IC 4-21.5-3-33 ------- AOPA: elements of official agency record; record is exclusive basis for agency action and judicial review

(a) An agency shall maintain an official record of each proceeding under this chapter.

(b) The agency record of the proceeding consists only of the following:

(1) Notices of all proceedings.

(2) Any prehearing order.

(3) Any motions, pleadings, briefs, petitions, requests, and intermediate rulings.

(4) Evidence received or considered.

(5) A statement of matters officially noticed.

(6) Proffers of proof and objections and rulings on them.

(7) Proposed findings, requested orders, and exceptions.

(8) The record prepared for the administrative law judge or for the ultimate authority or its designee under sections 28 through 31 of this chapter, at a hearing, and any transcript of the record considered before final disposition of the proceeding.

(9) Any final order, nonfinal order, or order on rehearing.

(10) Staff memoranda or data submitted to the administrative law judge or a person presiding in a proceeding under sections 28 through 31 of this chapter.

(11) Matters placed on the record after an ex parte communication.

(c) Except to the extent that a statute provides otherwise, the agency record described by subsection (b) constitutes the exclusive basis for agency action in proceedings under this chapter and for judicial review of a proceeding under this chapter.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3-34 ------- AOPA: development of informal procedures encouraged

An agency is encouraged to develop informal procedures that are consistent with this article and make unnecessary more elaborate proceedings under this article. An agency may adopt rules, under IC 4-22-2, setting specific procedures to facilitate informal settlement of matters. This section does not require any person to settle a matter under the agency's informal procedures.

[As amended by: P.L.35-1987, §16.]

IC 4-21.5-3-35 ------- AOPA: granting of additional procedural rights and adoption of procedural rules by agencies

An agency may grant procedural rights to persons in addition to those conferred by this article so long as the rights conferred upon other persons by any law are not substantially prejudiced. The agency may adopt rules, under IC 4-22-2, concerning the nature and requirements of all procedures for requesting a proceeding or engaging in a proceeding, so long as the rules are not inconsistent with this article.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3-36 ------- AOPA: knowing or intentional violation of statute by administrative law judge a misdemeanor

An individual who:

(1) is serving alone or with others as an administrative law judge or as a person presiding in a proceeding under sections 28 through 31 of this chapter; and

(2) knowingly or intentionally violates section 11, 12, or 13 of this chapter;

commits a Class A misdemeanor.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3-37 ------- AOPA: aiding, intentionally inducing or causing violation of statute by administrative law judge a misdemeanor

A person who:

(1) aids, induces, or causes an individual serving alone or with others as an administrative law judge or as a person presiding in a proceeding under sections 28 through 31 of this chapter to violate section 11, 12, or 13 of this chapter; and

(2) acts with the intent to:

(A) have the individual described in subdivision (1) disqualified from serving in a proceeding; or

(B) influence the individual described in subdivision (1) with respect to any issue in a proceeding;

commits a Class A misdemeanor.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-3.5. MEDIATION

IC 4-21.5-3.5-1 ------ Mediation: applicability of chapter

(a) Except as provided in subsections (b) and (c), the mediation guidelines adopted by rule under this chapter must supplement the procedural rights established by this article.

(b) An agency described in IC 4-21.5-2-4 that is exempt from administrative orders and procedures required under IC 4-21.5 may adopt rules consistent with this chapter for the use of mediation to resolve proceedings.

(c) An agency may elect to use the mediation provisions of this chapter for determinations described in IC 4-21.5-2-6 that are exempt from the administrative orders and procedures required under IC 4-21.5.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-2 ------ Mediation: ultimate authority to determine appropriate types of proceedings; agency may adopt rules

(a) For each type of administrative proceeding, the ultimate authority shall determine whether mediation is an appropriate means of alternative dispute resolution.

(b) For proceedings that an ultimate authority determines to be appropriate for mediation, the agency may adopt rules under IC 4-22-2 to implement this chapter. The rules, to the extent possible, shall not be inconsistent with Rule 2 of the Indiana Supreme Court Rules for Alternative Dispute Resolution.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-3 ------ Mediation: parties must agree

Before a proceeding is initiated, an agency and a person who may be the subject of an agency action may agree to use mediation to resolve a dispute.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-4 ------ Mediation: mediator has immunity

A mediator, co-mediator, or team mediator appointed and acting under this chapter has immunity in the same manner and to the same extent as a judge having jurisdiction in Indiana.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-5 ------ Mediation: ALJ may select proceeding for mediation; objections

(a) If a proceeding is of a type that has been identified as appropriate for alternative dispute resolution under section 2 of this chapter, the administrative law judge assigned to the proceeding may, on the administrative law judge's own motion or upon motion of any party, select the proceeding for mediation.

(b) Not more than fifteen (15) days after an order of selection for mediation, a party may object by filing a written objection specifying the grounds. The administrative law judge shall promptly consider an objection to mediation and any response to the objection and shall reconsider whether the proceeding is appropriate for mediation.

(c) In considering an order for mediation under this section, the administrative law judge shall consider:

(1) the willingness of the parties to mutually resolve their dispute;

(2) the ability of the parties to participate in the mediation process;

(3) the need for discovery and the extent to which it has been conducted; and

(4) any other factors that affect the potential for fair resolution of the dispute through the mediation process.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-6 ------ Mediation: selection of mediator

(a) If a proceeding is conducted by mediation, the administrative law judge assigned to the proceeding shall within fifteen (15) days after the date of the order for mediation make available to the parties, at no cost, a mediator who is qualified under section 8 of this chapter, or the parties may elect to use, at their own cost, an outside mediator who is:

(1) qualified under section 8 of this chapter; and

(2) approved by the administrative law judge assigned to the proceeding.

(b) If a mediator is not selected by agreement or choice under subsection (a), the administrative law judge assigned to the proceeding shall designate three (3) mediators from the approved list of mediators described in subsection 7(d) and allow fifteen (15) days for alternate striking by each side. The party initiating the proceeding shall strike first. The mediator remaining after the striking process is the mediator.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-7 ------ Mediation: mediator listings

(a) A person, other than agency personnel, who wishes to serve as a mediator under this chapter shall file an application with the ultimate authority or its designee describing the type of proceeding in which the person desires to serve as a mediator and setting forth qualifications as required by section 8 of this chapter and the rules adopted under this chapter.

(b) A mediator must reapply if required by the rules.

(c) The administrative law judge assigned to a proceeding may allow mediation teams and co-mediators.

(d) The ultimate authority or its designee that uses mediation for dispute resolution shall maintain a list of approved mediators and the types of proceedings in which each mediator is authorized to serve. A mediator may be removed from the approved list for good cause, after a hearing.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-8 ------ Mediation: required mediation training

A person who applies to be a mediator under this chapter must have:

(1) completed at least forty (40) hours of mediation training in courses certified as appropriate for mediation training by the Indiana commission for continuing legal education;

(2) received a minimum of five (5) hours of mediation training during the two (2) year period before application; and

(3) received a minimum of five (5) hours of mediation training during the two (2) year period before reapplication if reapplication is required by the agency involved.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-9 ------ Mediation: rules for selection of mediator

If rules are adopted under section 2 of this chapter, the rules must include guidelines for selection of a mediator for the ultimate authority when there is no appropriate mediator or listed mediator available and the parties cannot agree on an unlisted mediator.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-10 ----- Mediation: mediator may choose not to serve

A person selected to serve as a mediator under this chapter may choose not to serve for any reason.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-11 ----- Mediation: replacement of mediator for good cause

At any time, a party to a proceeding may request that the administrative law judge replace the mediator of the proceeding for good cause.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-12 ----- Mediation: procedure for replacement of mediator

If a mediator chooses not to serve or the administrative law judge decides to replace a mediator, the mediator selection process described in this chapter shall be repeated.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-13 ----- Mediation: reasons for ineligibility of mediator

A mediator may not be selected to mediate a proceeding if the mediator:

(1) has an interest in the outcome of the proceeding;

(2) is related to any of the parties or attorneys in the proceeding; or

(3) is employed by any of the parties or attorneys involved in the proceeding, except that an employee of the agency involved may serve as a mediator if the employee of the agency:

(A) has not participated in the investigation or prosecution of the dispute; and

(B) does not otherwise have an interest in the outcome of the proceeding.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-14 ----- Mediation: mediation costs

(a) If the parties to a proceeding elect to use an outside mediator, the costs of mediation must be paid as agreed by the parties. If there is no agreement of the parties, the administrative law judge assigned to the proceeding shall determine the mediation costs, if necessary, and equitably divide the mediation costs among the parties.

(b) To make the determination required by subsection (a), the administrative law judge shall consider the following:

(1) The complexity of the litigation.

(2) The skill levels needed to mediate the proceeding.

(3) The ability of a party to pay.

(c) Mediation costs must be paid not more than thirty (30) days after the mediation is completed unless otherwise agreed among the mediator and the parties.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-15 ----- Mediation: continuation of proceeding during mediation

If a proceeding is selected for mediation, the administrative law judge assigned to the proceeding shall continue the proceeding until the mediation is completed.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-16 ----- Mediation: responsibilities of mediator

A mediator for a proceeding under this chapter shall:

(1) inform the parties of the anticipated cost of mediation;

(2) advise the parties that the mediator does not represent either or both of the parties;

(3) define and describe the process of mediation to the parties;

(4) disclose the nature and extent of any relationships with the parties and any personal, financial, or other interest that may result in bias or a conflict of interest;

(5) advise each of the parties to consider independent legal advice;

(6) disclose to the parties or their attorneys any factual documentation revealed during the mediation if at the end of the mediation process the disclosure is agreed to by both parties;

(7) inform the parties of the extent to which information obtained from and about the participants through the mediation process is not privileged and may be subject to disclosure;

(8) inform the parties that they may introduce the written mediated agreement into evidence if the agreement is signed by all parties to the dispute;

(9) advise the parties of the time, date, and location of the mediation at least ten (10) days in advance, unless a shorter period is agreed to by the parties; and

(10) advise the parties of all persons whose presence at the mediation might facilitate settlement.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-17 ----- Mediation: attendance at mediation sessions and conferences

(a) The parties and their attorneys, if any, must be present at any mediation session unless otherwise agreed. A mediator may allow nonparties to the dispute to be present at a mediation session if the parties agree.

(b) All parties, attorneys with settlement authority, representatives with settlement authority, and necessary individuals must be present at each mediation conference to facilitate settlement of a dispute, unless excused by the administrative law judge.

(c) Mediation sessions are not open to the public.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-18 ----- Mediation: confidential statements

(a) The attorney for a party to a proceeding may submit to the mediator a confidential statement of the proceeding, not to exceed ten (10) pages, before a mediation conference. The statement submitted under this section must include the following:

(1) The legal and factual contentions of the party.

(2) The factors considered in arriving at a settlement posture.

(3) The settlement negotiations to date.

(b) A confidential statement under this section may be supplemented by exhibits or evidence that must be made available to the opposing party or the opposing party's counsel at least five (5) days before the mediation conference.

(c) A confidential statement is privileged and confidential unless an agreement by the parties to the contrary is provided to the mediator.

(d) If the mediation process does not result in settlement, any submitted confidential statement must be returned to the submitting attorney or party.

(e) Notwithstanding IC 4-21.5-4-6, the following are not public records or part of the agency record, gathered by the mediator in the course of mediation, in a proceeding:

(1) A confidential statement.

(2) Exhibits.

(3) Evidence.

(4) Other information.

(5) Draft settlement documents.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-19 ----- Mediation: settlement evaluation

In the mediation process, the mediator may meet jointly or separately with the parties and may express an evaluation of the proceeding to one (1) or more parties or their representatives. This evaluation may be expressed in the form of settlement ranges rather than exact amounts. The mediator may share revealed settlement authority with other parties or their representatives.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-20 ----- Mediation: completion, termination or extension of mediation process

(a) As soon after mediation as practicable, the mediator shall report to the administrative law judge that the mediation process has been completed, terminated, or extended.

(b) The mediator shall terminate mediation whenever:

(1) the mediator believes that continuation of the process would harm or prejudice one (1) or more of the parties; or

(2) the ability or willingness of any party to participate meaningfully in mediation is lacking to the extent that a reasonable agreement is unlikely.

(c) After at least two (2) mediation sessions have been completed, any party may terminate mediation. The mediator may not state the reason for termination except when the termination is due to conflict of interest or bias on the part of the mediator, in which case another mediator may be assigned to the proceeding by the administrative law judge for the proceeding.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-21 ----- Mediation: mediator's report; mediation agreement; joint stipulation of disposition

(a) If the parties do not reach an agreement on any matter as a result of mediation, the mediator shall report the lack of an agreement without comment or recommendation to the administrative law judge assigned to the proceeding. With the consent of the parties, the mediator's report may also identify any pending motions or outstanding legal issues, discovery process, or other action by any party that, if resolved or completed, would facilitate the possibility of a settlement.

(b) An agreement as a result of mediation must be in writing and signed by the parties. The agreement must be filed with the administrative law judge assigned to the proceeding. If the agreement is complete on all issues, it must be accompanied by a joint stipulation of disposition. Upon approval of a joint stipulation of disposition by the administrative law judge, it has the same force and effect as an agreed order approved by an administrative law judge from the agency involved.

(c) An approved joint stipulation of disposition under this chapter is considered a contract between the parties.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-22 ----- Mediation: subsequent disputes

A person who has served as a mediator in a proceeding may act as a mediator in subsequent disputes between the parties, and the parties may provide for a review of the agreement with the mediator on a periodic basis. However, the mediator shall decline to act in any capacity, except as a mediator, unless the subsequent association is clearly distinct from the mediation issues.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-23 ----- Mediation: subsequent matters

A mediator is required to use an effective system to identify potential conflict of interest at the time of appointment to a proceeding as a mediator. The mediator may not subsequently act as an investigator or make any recommendations regarding the mediated proceeding. A person may not serve as an administrative law judge in a subsequent hearing of a matter in which the person served as a mediator.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-24 ----- Mediation: applicability of rules of evidence

With the exception of privileged communications, the rules of evidence do not apply to mediation, but factual information having a bearing on the question of damages should be supported by documentary evidence whenever possible.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-25 ----- Mediation: limitations on discovery

Whenever possible, parties to a proceeding are encouraged to limit discovery to the development of information necessary to facilitate the mediation process. By agreement of the parties, or as ordered by the administrative law judge, discovery may be deferred during mediation.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-26 ----- Mediation: subsequent admissibility of evidence from mediation proceeding

(a) Mediation shall be regarded as a settlement negotiation. Evidence of furnishing or offering or promising to accept a valuable consideration in compromising or attempting to compromise a claim that was disputed as to either validity or amount is not admissible in a proceeding to prove liability for or invalidity of the claim or its amount.

(b) Evidence of conduct or statements made in the course of mediation is not admissible. However, this subsection does not require the exclusion of evidence otherwise discoverable merely because it is presented in the course of the mediation process. This subsection does not require exclusion when the evidence is offered for another purpose, such as bias or prejudice of a witness or negating a contention of undue delay.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-3.5-27 ----- Mediation: confidentiality of mediation matters

(a) A mediator is not subject to process requiring disclosure of any matter discussed during the mediation. Matters discussed during mediation are confidential and privileged.

(b) The confidentiality requirement of subsection (a) may not be waived by the parties.

(c) An objection to the obtaining of testimony or physical evidence from mediation may be made by any party or by the mediator.

[As added by: P.L.16-1996, §1.]

IC 4-21.5-4. SPECIAL PROCEEDINGS; EMERGENCY AND OTHER TEMPORARY ORDERS

IC 4-21.5-4-1 --------- AOPA: when an agency may conduct special proceedings

An agency may conduct proceedings under this chapter if:

(1) an emergency exists; or

(2) a statute authorizes the agency to issue a temporary order or otherwise take immediate agency action.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-4-2 --------- AOPA: orders issued in special proceedings

(a) The agency shall issue the order under this chapter by one (1) of the following procedures:

(1) Except as provided in IC 25-1-9-10, without notice or an evidentiary proceeding, by any authorized individual or panel of individuals.

(2) After a hearing conducted by an administrative law judge.

(b) The resulting order must include a brief statement of the facts and the law that justifies the agency's decision to take the specific action under this chapter.

[As amended by: P.L.43-1995, §1.]

IC 4-21.5-4-3 --------- AOPA: notice in special proceedings

The agency shall give such notice as is practicable to persons who are required to comply with the order under this chapter. The order is effective when issued.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-4-4 --------- AOPA: hearings on orders issued in special proceedings

Upon a request by a party for a hearing on an order rendered under section 2(a)(1) of this chapter, the agency shall, as quickly as is practicable, set the matter for an evidentiary hearing. An administrative law judge shall determine whether the order under this chapter should be voided, terminated, modified, stayed, or continued.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-4-5 --------- AOPA: expiration of orders issued in special proceedings

(a) Except as provided in subsection (c), an order issued under this chapter expires on the earliest of the following:

(1) The date set in the order.

(2) The date set by a statute other than this article.

(3) The elapse of ninety (90) days.

(b) During the pendency of any related proceedings under IC 4-21.5-3, the agency responsible for the proceeding may renew the order for successive ninety (90) day periods unless a statute other than this article prohibits the renewal of the order.

(c) An order issued under this chapter and IC 15-2.1-6 does not expire.

[As amended by: P.L.26-1997, §1.]

IC 4-21.5-4-6 --------- AOPA: agency record in special proceedings

The agency record in a proceeding under this chapter consists of any documents regarding the matter that were considered or prepared by the agency in a proceeding under section 2(a)(1) of this chapter and, if a hearing is conducted under section 2(a)(2) or 4 of this chapter, the items described in IC 4-21.5-3-33.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-5. JUDICIAL REVIEW

IC 4-21.5-5-1 --------- AOPA: exclusive means for judicial review of an agency action established

Except as provided in IC 22-9 and IC 22-9.5, this chapter establishes the exclusive means for judicial review of an agency action. However, a subpoena, discovery order, or protective order issued under this article may be contested only in an action for civil enforcement under IC 4-21.5-6-2.

[As amended by: P.L.14-1994, §1.]

IC 4-21.5-5-2 --------- AOPA: initiation of judicial review; procedural qualifications for review

(a) Judicial review is initiated by filing a petition for review in the appropriate court.

(b) Only a person who qualifies under:

(1) section 3 of this chapter concerning standing;

(2) section 4 of this chapter concerning exhaustion of administrative remedies;

(3) section 5 of this chapter concerning the time for filing a petition for review;

(4) section 13 of this chapter concerning the time for filing the agency record for review; and

(5) any other statute that sets conditions for the availability of judicial review;

is entitled to review of a final agency action.

(c) A person is entitled to judicial review of a nonfinal agency action only if the person establishes both of the following:

(1) Immediate and irreparable harm.

(2) No adequate remedy exists at law. (The failure of a person to comply with the procedural requirements of this article may not be the basis for a finding of an inadequate remedy at law.)

[As added by: P.L.18-1986, §1.]

IC 4-21.5-5-3 --------- AOPA: standing for judicial review of agency action

(a) The following persons have standing to obtain judicial review of an agency action:

(1) A person to whom the agency action is specifically directed.

(2) A person who was a party to the agency proceedings that led to the agency action.

(3) A person eligible for standing under a law applicable to the agency action.

(4) A person otherwise aggrieved or adversely affected by the agency.

(b) A person has standing under subsection (a)(4) only if:

(1) the agency action has prejudiced or is likely to prejudice the interests of the person;

(2) the person:

(A) was eligible for an initial notice of an order or proceeding under this article, was not notified of the order or proceeding in substantial compliance with this article, and did not have actual notice of the order or proceeding before the last date in the proceeding that the person could object or otherwise intervene to contest the agency action; or

(B) was qualified to intervene to contest an agency action under IC 4-21.5-3-21(a), petitioned for intervention in the proceeding, and was denied party status;

(3) the person's asserted interests are among those that the agency was required to consider when it engaged in the agency action challenged; and

(4) a judgment in favor of the person would substantially eliminate or redress the prejudice to the person caused or likely to be caused by the agency action.

[As amended by: P.L.35-1987, §18.]

IC 4-21.5-5-4 --------- AOPA: exhaustion of administrative remedies; waiver of right to judicial review

(a) A person may file a petition for judicial review under this chapter only after exhausting all administrative remedies available within the agency whose action is being challenged and within any other agency authorized to exercise administrative review.

(b) A person who:

(1) fails to timely object to an order or timely petition for review of an order within the period prescribed by this article; or

(2) is in default under this article;

has waived the person's right to judicial review under this chapter.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-5-5 --------- AOPA: timeliness of petition for judicial review

Except as otherwise provided, a petition for review is timely only if it is filed within thirty (30) days after the date that notice of the agency action that is the subject of the petition for judicial review was served.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-5-6 --------- AOPA: venue, jurisdiction and parties [Effective until 1/1/2002]

(a) Venue is in the judicial district where:

(1) the petitioner resides or maintains a principal place of business;

(2) the agency action is to be carried out or enforced; or

(3) the principal office of the agency taking the agency action is located.

(b) If more than one (1) person may be aggrieved by the agency action, only one (1) proceeding for review may be had, and the court in which a petition for review is first properly filed has jurisdiction.

(c) The rules of procedure governing civil actions in the courts govern pleadings and requests under this chapter for a change of judge or change of venue to another judicial district described in subsection (a).

(d) Each person who was a party to the proceeding before the agency is a party to the petition for review.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-5-6 --------- AOPA: venue, jurisdiction and parties [Effective 1/1/2002]

(a) (a) Except as provided in subsection (e), venue is in the judicial district where:

(1) the petitioner resides or maintains a principal place of business;

(2) the agency action is to be carried out or enforced; or

(3) the principal office of the agency taking the agency action is located.

(b) If more than one (1) person may be aggrieved by the agency action, only one (1) proceeding for review may be had, and the court in which a petition for review is first properly filed has jurisdiction.

(c) The rules of procedure governing civil actions in the courts govern pleadings and requests under this chapter for a change of judge or change of venue to another judicial district described in subsection (a).

(d) Each person who was a party to the proceeding before the agency is a party to the petition for review.

(e) Venue with respect to judicial review of an action of the Indiana board of tax review is in the tax court.

[As amended by: P.L.198-2001, §3.]

IC 4-21.5-5-7 --------- AOPA: contents of petition for judicial review

(a) A petition for review must be filed with the clerk of the court.

(b) A petition for review must be verified and set forth the following:

(1) The name and mailing address of the petitioner.

(2) The name and mailing address of the agency whose action is at issue.

(3) Identification of the agency action at issue, together with a copy, summary, or brief description of the agency action.

(4) Identification of persons who were parties in any proceedings that led to the agency action.

(5) Specific facts to demonstrate that the petitioner is entitled to obtain judicial review under section 2 of this chapter.

(6) Specific facts to demonstrate that the petitioner has been prejudiced by one (1) or more of the grounds described in section 14 of this chapter.

(7) A request for relief, specifying the type and extent of relief requested.

[As amended by: P.L.35-1987, §19.]

IC 4-21.5-5-8 --------- AOPA: service and notice of petition for judicial review

(a) A petitioner for judicial review shall serve a copy of the petition upon:

(1) the ultimate authority issuing the order;

(2) the ultimate authority for each other agency exercising administrative review of the order;

(3) the attorney general; and

(4) each party to the proceeding before an agency;

in the manner provided by the rules of procedure governing civil actions in the courts. If the ultimate authority consists of more than one (1) individual, service on the ultimate authority must be made to the secretary or chairperson of the ultimate authority.

(b) The petitioner shall use means provided by the rules of procedure governing civil actions in the courts to give notice of the petition for review to all other parties in any proceedings that led to the agency action.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-5-9 --------- AOPA: petitions for judicial review and for stay orders

(a) If a petition for judicial review concerns a matter other than an assessment or determination of tax due or claimed to be due the state, and the law concerning the agency whose order is being reviewed does not preclude a stay of the order by the court, the person seeking the review may seek, by filing a verified petition, an order of the court staying the action of the agency pending decision by the court. The court may enter an order staying the agency order pending a final determination if:

(1) the court finds that the petition for review and the petition for a stay order show a reasonable probability that the order or determination appealed from is invalid or illegal; and

(2) a bond is filed that is conditioned upon the due prosecution of the proceeding for review and that the petitioner will pay all court costs and abide by the order of the agency if it is not set aside. The bond must be in the amount and with the surety approved by the court. However, the amount of the bond must be at least five hundred dollars ($500).

(b) If a petition for review concerns a revocation or suspension of a license and the law governing the agency permits a staying of the action of the agency by court order pending judicial review, any stay ordered under subsection (a) is effective during the period of the review and any appeal from the review and until the review is finally determined, unless otherwise ordered by the court granting the stay. If the stay is granted as provided in this section and the determination of the agency is approved on final determination, the revocation or suspension of the license immediately becomes effective.

[As amended by: P.L.35-1987, §20.]

IC 4-21.5-5-10 ------- AOPA: judicial review of issues not raised before the agency

A person may obtain judicial review of an issue that was not raised before the agency, only to the extent that:

(1) the issue concerns whether a person who was required to be notified by this article of the commencement of a proceeding was notified in substantial compliance with this article; or

(2) the interests of justice would be served by judicial resolution of an issue arising from a change in controlling law occurring after the agency action.

[As amended by: P.L.35-1987, §21.]

IC 4-21.5-5-11 ------- AOPA: limits on judicial review of disputed facts

Judicial review of disputed issues of fact must be confined to the agency record for the agency action supplemented by additional evidence taken under section 12 of this chapter. The court may not try the cause de novo or substitute its judgment for that of the agency.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-5-12 ------- AOPA: limits on additional evidence; remand before final disposition of petition for review

(a) The court may receive evidence, in addition to that contained in the agency record for judicial review, only if it relates to the validity of the agency action at the time it was taken and is needed to decide disputed issues regarding one (1) or both of the following:

(1) Improper constitution as a decision-making body or grounds for disqualification of those taking the agency action.

(2) Unlawfulness of procedure or of decision-making process.

This subsection applies only if the additional evidence could not, by due diligence, have been discovered and raised in the administrative proceeding giving rise to a proceeding for judicial review.

(b) The court may remand a matter to the agency before final disposition of a petition for review with directions that the agency conduct further factfinding or that the agency prepare an adequate record, if:

(1) the agency failed to prepare or preserve an adequate record;

(2) the agency improperly excluded or omitted evidence from the record; or

(3) a relevant law changed after the agency action and the court determines that the new provision of law may control the outcome.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-5-13 ------- AOPA: submission of agency record for judicial review

(a) Within thirty (30) days after the filing of the petition, or within further time allowed by the court or by other law, the petitioner shall transmit to the court the original or a certified copy of the agency record for judicial review of the agency action, consisting of:

(1) any agency documents expressing the agency action;

(2) other documents identified by the agency as having been considered by it before its action and used as a basis for its action; and

(3) any other material described in this article as the agency record for the type of agency action at issue, subject to this section.

(b) An extension of time in which to file the record shall be granted by the court for good cause shown. Inability to obtain the record from the responsible agency within the time permitted by this section is good cause. Failure to file the record within the time permitted by this subsection, including any extension period ordered by the court, is cause for dismissal of the petition for review by the court, on its own motion, or on petition of any party of record to the proceeding.

(c) Upon a written request by the petitioner, the agency taking the action being reviewed shall prepare the agency record for the petitioner. If part of the record has been preserved without a transcript, the agency shall prepare a transcript for inclusion in the record transmitted to the court, except for portions that the parties to the judicial review proceeding stipulate to omit in accordance with subsection (e).

(d) Notwithstanding IC 5-14-3-8, the agency shall charge the petitioner with the reasonable cost of preparing any necessary copies and transcripts for transmittal to the court, unless a person files with the court, under oath and in writing, the statement described by IC 33-19-3-2.

(e) By stipulation of all parties to the review proceedings, the record may be shortened, summarized, or organized.

(f) The court may tax the cost of preparing transcripts and copies for the record:

(1) against a party to the judicial review proceeding who unreasonably refuses to stipulate to shorten, summarize, or organize the record; or

(2) in accordance with the rules governing civil actions in the courts or other law.

(g) Additions to the record concerning evidence received under section 12 of this chapter must be made as ordered by the court. The court may require or permit subsequent corrections or additions to the record.

[As amended by: P.L.3-1989, §24.]

IC 4-21.5-5-14 ------- AOPA: burden of demonstrating the invalidity of agency action, standards of review, findings; grounds for judicial relief

(a) The burden of demonstrating the invalidity of agency action is on the party to the judicial review proceeding asserting invalidity.

(b) The validity of agency action shall be determined in accordance with the standards of review provided in this section, as applied to the agency action at the time it was taken.

(c) The court shall make findings of fact on each material issue on which the court's decision is based.

(d) The court shall grant relief under section 15 of this chapter only if it determines that a person seeking judicial relief has been prejudiced by an agency action that is:

(1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(2) contrary to constitutional right, power, privilege, or immunity;

(3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(4) without observance of procedure required by law; or

(5) unsupported by substantial evidence.

[As amended by P.L.35-1987, §22.]

IC 4-21.5-5-15 ------- AOPA: judicial remedies for finding of prejudice by agency action

If the court finds that a person has been prejudiced under section 14 of this chapter, the court may set aside an agency action and:

(1) remand the case to the agency for further proceedings; or

(2) compel agency action that has been unreasonably delayed or unlawfully withheld.

[As amended by P.L.35-1987, §23.]

IC 4-21.5-5-16 ------- AOPA: appeal of decision on petition for review of agency action

Decisions on petitions for review of agency action are appealable in accordance with the rules governing civil appeals from the courts.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-6. CIVIL ENFORCEMENT

IC 4-21.5-6-1 --------- AOPA: petition for civil enforcement to enforce an order

In addition to any other remedy provided by law:

(1) an agency in its own name;

(2) an agency in the name of the state;

(3) the attorney general in the name of the attorney general; or

(4) the attorney general in the name of the state at the request of an agency;

may apply for a court order in a circuit or superior court to enforce an order issued under this article by a verified petition for civil enforcement.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-6-2 --------- AOPA: enforcement of a subpoena, discovery order, or protective order issued by an agency

(a) This section applies only to the enforcement of a subpoena, discovery order, or protective order issued by an agency under this article.

(b) Any party to a proceeding before an agency who has obtained an order from an administrative law judge may apply for a court order in a circuit or superior court to enforce the subpoena or order issued by an agency by a verified petition for civil enforcement. Notice of an application under this section shall be given:

(1) to the administrative law judge issuing the order;

(2) to the attorney general; and

(3) to each party to the proceeding before the agency;

by personal service or by the United States mail at the time the application is filed.

[As amended by P.L.35-1987, §.24.]

IC 4-21.5-6-3 --------- AOPA: enforcement of orders other than a subpoena, discovery order, or protective order

(a) This section does not apply to the enforcement of a subpoena, discovery order, or protective order issued by an agency under this article.

(b) Nothing in this chapter limits or precludes civil action under IC 13-30-1.

(c) Any party to a proceeding concerning an agency's order may file a petition for civil enforcement of that order.

(d) The action may not be commenced under this section if:

(1) less than sixty (60) days has elapsed since the petitioner gave notice of the alleged violation and of the petitioner's intent to seek civil enforcement to the head of the agency concerned, to the attorney general, and to each alleged violator against whom the petitioner seeks civil enforcement;

(2) the agency has filed and is diligently prosecuting a petition for civil enforcement of the same order against the same defendant; or

(3) a petition for review of the same order has been filed and is pending in court.

(e) The petition under this section must name as defendants each alleged violator against whom the petitioner seeks civil enforcement.

(f) The agency whose order is sought to be enforced is not a party to an action under this section unless the agency moves to intervene. The court shall grant an agency's motion to intervene and shall allow the agency to intervene as a plaintiff or defendant.

(g) The agency whose order is sought to be enforced under this section may move to dismiss on the grounds that the petition fails to qualify under this section or that enforcement would be contrary to the policy of the agency. The court shall grant the motion to dismiss unless the petitioner demonstrates that:

(1) the petition qualifies under this section; and

(2) the agency's failure to enforce its order is based on an exercise of discretion that is improper on one (1) or more of the grounds provided in IC 4-21.5-5-14.

(h) Except to the extent expressly authorized by law, a petition for civil enforcement filed under this section may not request, and the court may not grant, any monetary payment apart from taxable costs.

[As amended by P.L.1-1996, §26.]

IC 4-21.5-6-4 --------- AOPA: naming of defendants in a petition for civil enforcement

A petition for civil enforcement must name as defendants each alleged violator against whom the party seeks to obtain civil enforcement.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-6-5 --------- AOPA: venue in a petition for civil enforcement

Venue is determined in accordance with the rules governing civil actions in the courts.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-6-6 --------- AOPA: remedies court may grant upon a showing of violation of an order

Upon a showing that a person has violated an order issued under this article, the court may grant:

(1) an injunction requested by any petitioner without bond;

(2) a restraining order or any appropriate relief other than an injunction requested by a petitioner under section 1 of this chapter without bond;

(3) a subpoena, discovery order, or protective order requested under section 2 of this chapter without a bond; or

(4) a restraining order or any appropriate relief other than an injunction requested by a petitioner under section 3 of this chapter with the bond specified by the court.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-6-7 --------- AOPA: appeal of decisions on petitions for civil enforcement

Decisions on petitions for civil enforcement are appealable in accordance with the rules governing civil appeals from the courts.

[As added by: P.L.18-1986, §1.]

IC 4-21.5-7. ENVIRONMENTAL ADJUDICATION

IC 4-21.5-7-1 --------- AOPA/environmental adjudication: director defined

As used in this chapter, "director" refers to the director of the office of environmental adjudication established by section 3 of this chapter.

[As added by: P.L. 41-1995, §2.]

IC 4-21.5-7-2 --------- AOPA/environmental adjudication: office defined

As used in this chapter, "office" refers to the office of environmental adjudication established by section 3 of this chapter.

[As added by: P.L. 41-1995, §2.]

IC 4-21.5-7-3 --------- AOPA/environmental adjudication: office established; purpose; jurisdiction

The office of environmental adjudication is established to review, under this article, decisions of the commissioner of the department of environmental management. Adjudicatory hearings required to implement:

(1) air pollution control laws (as defined in IC 13-11-2-6), water pollution control laws (as defined in IC 13-11-2-261), environmental management laws (as defined in IC 13-11-2-71), and IC 13-19; and

(2) rules of:

(A) the air pollution control board;

(B) the water pollution control board;

(C) the solid waste management board; and

(D) the financial assurance board;

shall be conducted by the office of environmental adjudication under IC 4-21.5.

[As amended by: P.L. 1-1996, §27.]

IC 4-21.5-7-4 --------- AOPA/environmental adjudication: employees of office; director

The office consists of the following employees:

(1) A director appointed by the governor who may serve as an environmental law judge.

(2) Environmental law judges, employed by the director.

(3) Any other staff, employed by the director, that are necessary to carry out the functions of the office.

(b) In the event of a vacancy, the governor shall appoint the director based upon recommendations by a four member (4) panel. Not more than two (2) members of the panel may be affiliated with the same political party. The panel shall consist of:

(1) one (1) person, who shall serve as the chair of the panel, appointed by the chief justice of the supreme court of Indiana;

(2) one (1) person appointed by the governor;

(3) one (1) person appointed by the speaker of the house of representatives;

(4) one (1) person appointed by the president pro tempore of the senate;

The panel shall nominate three (3) candidates for each vacancy and certify them to the governor as promptly as possible, but not later than sixty (60) days from the date a vacancy occurs. Not later than thirty (30) days after receipt of the panel's list of three (3) candidates, the governor may select one (1) candidate from the panel's list, or the governor may request that the panel nominate three (3) additional candidates. The panel shall meet whenever there is a vacancy in the director position.

[As added by: P.L. 41-1995, §2.]

IC 4-21.5-7-5 --------- AOPA/environmental adjudication: ultimate authority of environmental law judges

An environmental law judge is the ultimate authority under this article for reviews of decisions of the commissioner of environmental management.

[As added by: P.L. 41-1995, §2.]

IC 4-21.5-7-6 --------- AOPA/environmental adjudication: qualifications of environmental law judges; removal

(a) An environmental law judge hired after July 1, 1995, and the director must:

(1) be attorneys admitted to the bar of Indiana;

(2) have at least five (5) years of experience practicing administrative or environmental law in Indiana;

(3) be independent of the department of environmental management; and

(4) be subject to all provisions applicable to an administrative law judge under this article.

(b) The director or an environmental law judge may be removed for cause under:

(1) this article;

(2) IC 4-15-2; or

(3) applicable provisions of the Code of Judicial Conduct.

[As added by: P.L. 41-1995, §2.]

IC 4-21.5-7-7 --------- AOPA/environmental adjudication: adoption of forms, procedural rules

The office may:

(1) adopt forms; and

(2) establish procedural rules IC 4-22-2;

consistent with this article.

[As added by: P.L. 41-1995, §2.]

IC 4-21.5-7-8 --------- AOPA/environmental adjudication: expenses of office

(a) The director shall prepare the proposed budget for the office.

(b) The expenses of the office shall be paid from money allotted to the office of environmental adjudication to maintain the office.

[As amended by: P.L. 25-1997, §2.]

IC 4-21.5-7-9 --------- AOPA/environmental adjudication: authority to receive gifts

The office, on behalf of the state, may accept and receive from any source gifts and other funds that are made available to the state for the purposes of this chapter.

[As added by: P.L. 25-1997, §3.]

IC 4-22-2. ADOPTION OF ADMINISTRATIVE RULES

IC 4-22-2-3 ---------- Administrative rules: definitions

(a) "Agency" means any officer, board, commission, department, division, bureau, committee, or other governmental entity exercising any of the executive (including the administrative) powers of state government. The term does not include the judicial or legislative departments of state government or a political subdivision as defined in IC 36-1-2-13.

(b) "Rule" means the whole or any part of an agency statement of general applicability that:

(1) has or is designed to have the effect of law; and

(2) implements, interprets, or prescribes:

(A) law or policy; or

(B) the organization, procedure, or practice requirements of an agency.

(c) "Rulemaking action" means the process of formulating or adopting a rule. The term does not include an agency action.

(d) "Agency action" has the meaning set forth in IC 4-21.5-1-4.

(e) "Person" means an individual, corporation, limited liability company, partnership, unincorporated association, or governmental entity.

(f) "Publisher" refers to the publisher of the Indiana Register and Indiana Administrative Code, which is the legislative council, or the legislative services agency operating under the direction of the council.

(g) The definitions in this section apply throughout this article.

[As amended by: P.L.8-1993, §28.]

IC 4-22-2-13 --------- Administrative rules: applicability of chapter

(a) Subject to subsections (b), (c), and (d), this chapter applies to the addition, amendment, or repeal of a rule in every rulemaking action.

(b) This chapter does not apply to the following agencies:

(1) Any military officer or board.

(2) Any state educational institution (as defined in IC 20-12-0.5-1).

(c) This chapter does not apply to a rulemaking action that results in any of the following rules:

(1) A resolution or directive of any agency that relates solely to internal policy, internal agency organization, or internal procedure and does not have the effect of law.

(2) A restriction or traffic control determination of a purely local nature that:

(A) is ordered by the commissioner of the Indiana department of transportation;

(B) is adopted under IC 9-20-1-3(d), IC 9-21-4-7, or IC 9-20-7; and

(C) applies only to one (1) or more particularly described intersections, highway portions, bridge causeways, or viaduct areas.

(3) A rule adopted by the secretary of state under IC 26-1-9.1-526.

(4) An executive order or proclamation issued by the governor.

(d) Except as specifically set forth in IC 13-14-19, sections 24, 26, 27, and 29 of this chapter do not apply to rulemaking actions under IC 13-14-19.

[As amended by: P.L.57-2000, §1.]

IC 4-22-2-14 --------- Administrative rules: procedural rights and duties

This chapter creates only procedural rights and imposes only procedural duties. These procedural rights and duties are in addition to those created and imposed by other law.

[As added by: P.L.31-1985, §3.]

IC 4-22-2-15 --------- Administrative rules: who may perform rulemaking actions

Any rulemaking action that this chapter allows or requires an agency to perform, other than final adoption of a rule under section 29 or 37.1 of this chapter, may be performed by the individual or group of individuals with the statutory authority to adopt rules for the agency, a member of the agency's staff, or another agent of the agency. Final adoption of a rule under section 29 or 37.1 of this chapter, including readoption of a rule that is subject to sections 24 through 36 or to section 37.1 of this chapter and recalled for further consideration under section 40 of this chapter, may be performed only by the individual or group of individuals with the statutory authority to adopt rules for the agency.

[As amended by: P.L.1-1991, §15.]

IC 4-22-2-16 --------- Administrative rules: compliance with the open door law

For the purposes of this section, "governing body", "public agency", and "official action" have the meanings set forth in IC 5-14-1.5. When a governing body of a public agency performs an official action under this chapter, the agency shall comply with IC 5-14-1.5 (the Open Door Law).

[As added by: P.L.31-1985, §5.]

IC 4-22-2-17 --------- Administrative rules: applicability of the public records law

(a) IC 5-14-3 applies to the text of a rule that an agency intends to adopt from the earlier of the date that the agency takes any action under section 24 of this chapter, otherwise notifies the public of its intent to adopt a rule under any statute, or adopts the rule.

(b) IC 5-14-3 applies both to a rule and to the full text of a matter directly or indirectly incorporated by reference into the rule.

[As added by: P.L.31-1985, §6.]

IC 4-22-2-18 --------- Administrative rules: joint rule procedures

(a) If more than one (1) agency is required by statute to adopt the same rule, the agencies may publish a joint notice of a public hearing and conduct a joint public hearing. However, each agency shall separately draft and adopt a rule that covers the same subject matter.

(b) If an agency is authorized to adopt a rule and one (1) or more agencies are required to approve the rule, only the agency that is authorized to adopt the rule is required to comply with this chapter.

[As added by: P.L.31-1985, §7.]

IC 4-22-2-19 --------- Administrative rules: adoption of rule before statutory authorization becomes effective

(a) Except as provided in section 23.1 of this chapter, this section does not apply to the adoption of rules:

(1) required by statute if initiation of the rules is contingent upon the receipt of a waiver under federal law;

(2) that amend an existing rule;

(3) required by statutes enacted before June 30, 1995; or

(4) required by statutes enacted before June 30, 1995, and recodified in the same or similar form after June 29, 1995, in response to a program of statutory recodification conducted by the code revision commission.

(b) If an agency will have statutory authority to adopt a rule at the time that the rule becomes effective, the agency may conduct any part of its rulemaking action before the statute authorizing the rule becomes effective.

(c) However, an agency shall:

(1) begin the rulemaking process not later than sixty (60) days after the effective date of the statute that authorizes the rule; or

(2) if an agency cannot comply with subdivision (1), immediately provide written notification to the administrative rules oversight committee stating the reasons for the agency's noncompliance.

If an agency notifies the administrative rules oversight committee concerning a rule in compliance with subdivision (2), failure to adopt the rule within the time specified in subdivision (1) does not invalidate the rule.

[As amended by: P.L.44-1995, §2.]

IC 4-22-2-19.1 ------- Administrative rules: retroactive tax interpretations

A state agency may not retroactively apply a change in the agency's interpretation of a statute, regulation, or one of the agency's information bulletins, if that change increases a taxpayer's liability for a state tax or a property tax.

[As added by P.L.17-1996, §1.]

IC 4-22-2-19.5 ------- Administrative rules: strictures

(a) To the extent possible, a rule adopted under this article or under IC 13-14-9.5 shall comply with the following:

(1) Minimize the expenses to:

(A) regulated entities that are required to comply with the rule;

(B) persons who pay taxes or pay fees for government services affected by the rule; and

(C) consumers of products and services of regulated entities affected by the rule.

(2) Achieve the regulatory goal in the least restrictive manner.

(3) Avoid duplicating standards found in state or federal laws.

(4) Be written for ease of comprehension.

(5) Have practicable enforcement.

(b) Subsection (a) does not apply to a rule that must be adopted in a certain form to comply with federal law.

[As added by P.L.17-1996, §2.]

IC 4-22-2-20 --------- Administrative rules: requirements that agency's written rule document must meet

Whenever an agency submits a rule to the publisher, the attorney general, the governor, or the secretary of state under this chapter, the agency shall submit the rule in the form of a written document that:

(1) is clear, concise, and easy to interpret and to apply; and

(2) uses the format, numbering system, standards, and techniques established under section 42 of this chapter.

[As added by: P.L.31-1985, §9.]

IC 4-22-2-21 --------- Administrative rules: requirements for incorporations by reference

(a) If incorporation of the text in full would be cumbersome, expensive, or otherwise inexpedient, an agency may incorporate by reference into a rule part or all of any of the following matters:

(1) A federal or state statute, rule, or regulation.

(2) A code, manual, or other standard adopted by an agent of the United States, a state, or a nationally recognized organization or association.

(3) A manual of the state board of tax commissioners adopted in a rule described in IC 6-1.1-31-9.

(b) Each matter incorporated by reference under subsection (a) must be fully and exactly described.

(c) An agency may refer to a matter that is directly or indirectly referred to in a primary matter by fully and exactly describing the primary matter.

(d) Whenever an agency submits a rule to the attorney general, the governor, or the secretary of state under this chapter, the agency shall also submit a copy of the full text of each matter incorporated by reference under subsection (a) into the rule, other than the following:

(1) An Indiana statute or rule.

(2) A form or instructions for a form numbered by the commission on public records under IC 5-15-5.1-6.

(3) The source of a statement that is quoted or paraphrased in full in the rule.

(4) Any matter that has been filed with the secretary of state before the date that the rule containing the incorporation is filed.

(5) Any matter referred to in subsection (c) as a matter that is directly or indirectly referred to in a primary matter.

[As amended by: P.L.6-1997, §4.]

IC 4-22-2-22 --------- Administrative rules: attorney general is legal advisor

The attorney general is the legal advisor to all agencies in the drafting and preparation of rules.

[As added by: P.L.31-1985, §11.]

IC 4-22-2-23 --------- Administrative rules: solicitation of public comments on a rulemaking; publication of notice of intent

(a) This section does not apply to rules adopted under IC 4-22-2-37.1.

(b) Before or after an agency notifies the public of its intention to adopt a rule under section 24 of this chapter, the agency shall notify the public of its intention to adopt a rule by publishing a notice of intent to adopt a rule in the Indiana Register at least thirty (30) days before the preliminary adoption of the rule. The publication notice must include an overview of the intent and scope of the proposed rule and the statutory authority for the rule. The requirement to publish a notice of intent to adopt a rule does not apply to rulemaking under IC 13-14-9. The agency shall solicit comments from the public on the need for a rule, the drafting of a rule, or any other subject related to a rulemaking action. The procedures that the agency may use include the holding of conferences and the inviting of written suggestions, facts, arguments, or views. The agency shall prepare a written response that contains a summary of the comments received during any part of the rulemaking process. The written response is a public document. The agency shall make the written response available to interested parties upon request.

[As amended by: P.L.1-1996, §29.]

IC 4-22-2-23.1 ------- Administrative rules: solicitation of public comments on a rulemaking involving a temporary emergency rule

(a) This section and section 19(b) of this chapter apply to rules adopted under IC 4-22-2-37.1.

(b) Before or after an agency notifies the public of its intention to adopt a rule under section 24 of this chapter, the agency may solicit comments from all or any segment of the public on the need for a rule, the drafting of a rule, or any other subject related to a rulemaking action. The procedures that the agency may use include the holding of conferences and the inviting of written suggestions, facts, arguments, or views. An agency's failure to consider comments received under this section does not invalidate a rule subsequently adopted.

[As added by: P.L.44-1995, §4.]

IC 4-22-2-24 --------- Administrative rules: publication of notice of public hearing

(a) An agency shall notify the public of its intention to adopt a rule by complying with the publication requirements in subsections (b) and (c).

(b) The agency shall cause a notice of a public hearing to be published once in one (1) newspaper of general circulation in Marion County, Indiana. To publish the newspaper notice, the agency shall directly contract with the newspaper.

(c) The agency shall cause a notice of public hearing and the full text of the agency's proposed rule (excluding the full text of a matter incorporated by reference under section 21 of this chapter) to be published once in the Indiana Register. To publish the notice and proposed rule in the Indiana Register, the agency shall submit the text to the publisher. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall determine the number of copies of the rule and other documents to be submitted under this subsection.

(d) The agency shall include in the notice required by subsections (b) and (c):

(1) a statement of the date, time, and place at which the public hearing required by section 26 of this chapter will be convened;

(2) a general description of the subject matter of the proposed rule; and

(3) an explanation that the proposed rule may be inspected and copied at the office of the agency.

However, inadequacy or insufficiency of the subject matter description in a notice does not invalidate a rulemaking action.

(e) Although the agency may comply with the publication requirements in this section on different days, the agency must comply with all of the publication requirements in this section at least twenty-one (21) days before the public hearing required by section 26 of this chapter is convened.

(f) This section does not apply to the solicitation of comments under section 23 of this chapter.

[As added by: P.L.31-1985, §13.]

IC 4-22-2-25 --------- Administrative rules: rule must be approved by governor within one year after publication of intent; exception

(a) An agency has one (1) year from the date that it publishes a notice of intent to adopt a rule in the Indiana Register under section 23 of this chapter to comply with sections 26 through 33 of this chapter and obtain the approval or deemed approval of the governor. If an agency determines that a rule cannot be adopted within one (1) year after the publication of the notice of intent to adopt a rule under section 23 of this chapter, the agency shall, before the two hundred fiftieth day following the publication of the notice of intent to adopt a rule under section 23 of this chapter, notify the chairperson of the administrative oversight committee in writing of the:

(1) reasons why the rule was not adopted and the expected date the rule will be completed; and

(2) expected date the rule will be approved or deemed approved by the governor or withdrawn under section 41 of this chapter.

(b) If a rule is not approved before the later of:

(1) one (1) year after the agency publishes notice of intent to adopt the rule under section 23 of this chapter; or

(2) the expected date contained in a notice concerning the rule that is provided to the administrative rules oversight committee under subsection (a)(2);

a later approval or deemed approval is ineffective, and the rule may become effective only through another rulemaking action initiated under this chapter.

[As amended by: P.L.44-1995, §5.]

IC 4-22-2-26 --------- Administrative rules: public hearing procedures

(a) After the notices and the text of an agency's proposed rule are published under section 24 of this chapter, the agency shall conduct a public hearing on the proposed rule.

(b) The agency shall convene the public hearing on the date and at the time and place stated in its notices.

(c) The agency may conduct the public hearing in any informal manner that allows for an orderly presentation of comments and avoids undue repetition. However, the agency shall afford any person attending the public hearing an adequate opportunity to comment on the agency's proposed rule through the presentation of oral and written facts or argument.

(d) The agency may recess the public hearing and reconvene it on a different date or at a different time or place by:

(1) announcing the date, time, and place of the reconvened public hearing in the original public hearing before its recess; and

(2) recording the announcement in the agency's record of the public hearing.

(e) An agency that complies with subsection (d) is not required to give any further notice of a public hearing that is to be reconvened.

[As added by: P.L.31-1985, §15.]

IC 4-22-2-27 --------- Administrative rules: requisite consideration of comments from public hearing

The individual or group of individuals who will finally adopt the rule under section 29 of this chapter shall fully consider comments received at the public hearing required by section 26 of this chapter and may consider any other information before adopting the rule. Attendance at the public hearing or review of a written record or summary of the public hearing is sufficient to constitute full consideration.

[As added by: P.L.31-1985, §16.]

IC 4-22-2-28 --------- Administrative rules: Indiana economic development council review and comment; LSA fiscal analysis

(a) The Indiana economic development council may review and comment on any proposed rule and may suggest alternatives to reduce any regulatory burden that the proposed rule imposes on businesses. The agency that intends to adopt the proposed rule shall respond in writing to the Indiana economic development council concerning the council's comments or suggested alternatives before adopting the proposed rule under section 29 of this chapter.

(b) The agency shall also submit a proposed rule with an estimated economic impact greater than five hundred thousand dollars ($500,000) on the regulated entities to the legislative services agency after the preliminary adoption of the rule. Before the adoption of the rule, the legislative services agency shall prepare, not more than forty-five (45) days after receiving a proposed rule, a fiscal analysis concerning the effect that compliance with the proposed rule will have on the:

(1) state; and

(2) entities regulated by the proposed rule.

The fiscal analysis must contain an estimate of the economic impact of the proposed rule and a determination concerning the extent to which the proposed rule creates an unfunded mandate on a state agency or political subdivision. The fiscal analysis is a public document. The legislative services agency shall make the fiscal analysis available to interested parties upon request. The agency proposing the rule shall consider the fiscal analysis as part of the rulemaking process and shall provide the legislative services agency with the information necessary to prepare the fiscal analysis. The legislative services agency may also receive and consider applicable information from the regulated entities affected by the rule in preparation of the fiscal analysis.

[As amended by: P.L.17-1996, §3.]

IC 4-22-2-29 --------- Administrative rules: agency options on rule adoption; logical outgrowth

(a) After an agency has complied with sections 26, 27, and 28 of this chapter, the agency may:

(1) adopt a rule that is identical to a proposed rule published in the Indiana Register under section 24 of this chapter;

(2) subject to subsection (b), adopt a rule that consolidates part or all of two (2) or more proposed rules published in the Indiana Register under section 24 of this chapter and considered under section 27 of this chapter;

(3) subject to subsection (b), adopt part of one (1) or more proposed rules described in subsection (a)(2) in two (2) or more separate adoption actions; or

(4) subject to subsection (b), adopt a revised version of a proposed rule published under section 24 of this chapter and include provisions that did not appear in the published version.

(b) An agency may not adopt a rule that substantially differs from the version or versions of the proposed rule or rules published in the Indiana Register under section 24 of this chapter, unless it is a logical outgrowth of any proposed rule as supported by any written comments submitted during the public comment period.

[As amended by: P.L.12-1993, §2.]

IC 4-22-2-31 --------- Administrative rules: submission of rule to attorney general

(a) After an agency has complied with section 29 of this chapter, or with IC 13-14-9-9(1) or IC 13-14-9-9(2), as applicable, the agency shall submit its rule to the attorney general for approval. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter.

(b) The attorney general shall determine the number of copies of the rule and other documents to be submitted under this section.

[As amended by: P.L.1-1996, §30.]

IC 4-22-2-32 --------- Administrative rules: attorney general review of rule

(a) The attorney general shall review each rule submitted under section 31 of this chapter for legality.

(b) In the review, the attorney general shall determine whether the rule adopted by the agency complies with the requirements under section 29 of this chapter. The attorney general shall consider the following:

(1) The extent to which all persons affected by the adopted rule should have understood from the published rule or rules that their interests would be affected.

(2) The extent to which the subject matter of the adopted rule or the issues determined in the adopted rule are different from the subject matter or issues that were involved in the published rule or rules.

(3) The extent to which the effects of the adopted rule differ from the effects that would have occurred if the published rule or rules had been adopted instead.

In the review, the attorney general shall consider whether the adopted rule may constitute the taking of property without just compensation to an owner.

(c) Except as provided in subsections (d) and (h), the attorney general shall disapprove a rule under this section only if it:

(1) has been adopted without statutory authority;

(2) has been adopted without complying with this chapter;

(3) does not comply with requirements under section 29 of this chapter; or

(4) violates another law.

Otherwise, the attorney general shall approve the rule without making a specific finding of fact concerning the subjects.

(d) If an agency submits a rule to the attorney general without complying with section 20(2) of this chapter, the attorney general may:

(1) disapprove the rule; or

(2) return the rule to the agency without disapproving the rule.

(e) If the attorney general returns a rule under subsection (d)(2), the agency may bring the rule into compliance with section 20(2) of this chapter and resubmit the rule to the attorney general without readopting the rule.

(f) If the attorney general determines in the course of the review conducted under subsection (b) that a rule may constitute a taking of property, the attorney general shall advise the following:

(1) The governor.

(2) The agency head.

Advice given under this subsection shall be regarded as confidential attorney-client communication.

(g) The attorney general has forty-five (45) days from the date that an agency:

(1) submits a rule under section 31 of this chapter; or

(2) resubmits a rule under subsection (e);

to approve or disapprove the rule. If the attorney general neither approves nor disapproves the rule, the rule is deemed approved, and the agency may submit it to the governor for approval under section 33 of this chapter without the approval of the attorney general.

(h) For rules adopted under IC 13-14-9, the attorney general:

(1) shall determine whether the rule adopted by the agency under IC 13-14-9-9(2) is a logical outgrowth of the proposed rule as published under IC 13-14-9-5(a)(2) and of testimony presented at the board meeting held under IC 13-14-9-5(a)(3); and

(2) may disapprove a rule under this section only if the rule:

(A) has been adopted without statutory authority;

(B) has been adopted without complying with this chapter or IC 13-14-9;

(C) is not a logical outgrowth of the proposed rule as published under IC 13-14-9-5(a)(2) and of the testimony presented at the board meeting held under IC 13-14-9-5(a)(3); or

(D) violates another law.

[As amended by: P.L.1-1996, §31.]

IC 4-22-2-33 --------- Administrative rules: submission of rule to governor

(a) After a rule has been approved or deemed approved under section 32 of this chapter, the agency shall submit the rule to the governor for approval. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter.

(b) The governor shall determine the number of copies of the rule and other documents to be submitted under this section.

[As added by: P.L.31-1985, §22.]

IC 4-22-2-34 --------- Administrative rules: governor's review of rule

(a) The governor may approve or disapprove a rule submitted under section 33 of this chapter with or without cause.

(b) The governor has fifteen (15) days from the date that an agency submits a rule under section 33 of this chapter to approve or disapprove the rule. However, the governor may take thirty (30) days to approve or disapprove the rule if the governor files a statement with the secretary of state within the first fifteen (15) days after an agency submits the rule that states that the governor intends to take an additional fifteen (15) days to approve or disap-

prove the rule. If the governor neither approves nor disapproves the rule within the allowed period, the rule is deemed approved, and the agency may submit the rule to the secretary of state without the approval of the governor.

[As added by: P.L.31-1985, §23.]

IC 4-22-2-35 --------- Administrative rules: submission of rule to secretary of state

(a) When a rule has been approved or deemed approved by the governor within the period allowed by section 25 of this chapter, the agency shall immediately submit the rule to the secretary of state for filing. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter.

(b) The secretary of state shall determine the number of copies of the rule and other documents to be submitted under this section.

(c) Subject to section 39 of this chapter, the secretary of state shall:

(1) accept the rule for filing; and

(2) file stamp and indicate the date and time the rule is accepted on every duplicate original copy submitted.

[As added by: P.L.31-1985, §24.]

IC 4-22-2-36 --------- Administrative rules: effective date of rule

A rule that has been accepted for filing under section 35 of this chapter takes effect on the latest of the following dates:

(1) The effective date of the statute delegating authority to the agency to adopt the rule.

(2) The date that is thirty (30) days from the date and time that the rule was accepted for filing under section 35 of this chapter.

(3) The effective date stated by the agency in the rule.

(4) The date of compliance with every requirement established by law as a prerequisite to the adoption or effectiveness of the rule.

[As added by: P.L.31-1985, §25.]

IC 4-22-2-37.1 ------- Administrative rules: temporary emergency rules [Version 1; Effective until 1/1/2002]

(a) This section applies to a rulemaking action resulting in any of the following rules:

(1) An order adopted by the commissioner of the Indiana department of transportation under IC 9-20-1-3(d) or IC 9-21-4-7(a) and designated by the commissioner as an emergency rule.

(2) An action taken by the director of the department of natural resources under IC 14-22-2-6(d) or IC 14-22-6-13.

(3) An emergency temporary standard adopted by the occupational safety standards commission under IC 22-8-1.1-16.1.

(4) An emergency rule adopted by the solid waste management board under IC 13-22-2-3 and classifying a waste as hazardous.

(5) A rule, other than a rule described in subdivision (6), adopted by the department of financial institutions under IC 24-4.5-6-107 and declared necessary to meet an emergency.

(6) A rule required under IC 24-4.5-1-106 that is adopted by the department of financial institutions and declared necessary to meet an emergency under IC 24-4.5-6-107.

(7) A rule adopted by the Indiana utility regulatory commission to address an emergency under IC 8-1-2-113.

(8) An emergency rule jointly adopted by the water pollution control board and the budget agency under IC 13-18-13-18.

(9) An emergency rule adopted by the state lottery commission under IC 4-30-3-9.

(10) A rule adopted under IC 16-19-3-5 that the executive board of the state department of health declares is necessary to meet an emergency.

(11) An emergency rule adopted by the Indiana transportation finance authority under IC 8-21-12.

(12) An emergency rule adopted by the insurance commissioner under IC 27-1-23-7.

(13) An emergency rule adopted by the Indiana horse racing commission under IC 4-31-3-9.

(14) An emergency rule adopted by the air pollution control board, the solid waste management board, or the water pollution control board under IC 13-15-4-10(4) or to comply with a deadline required by federal law, provided:

(A) the variance procedures are included in the rules; and

(B) permits or licenses granted during the period the emergency rule is in effect are reviewed after the emergency rule expires.

(15) An emergency rule adopted by the Indiana election commission under IC 3-6-4.1-14.

(16) An emergency rule adopted by the department of natural resources under IC 14-10-2-5.

(17) An emergency rule adopted by the Indiana gaming commission under IC 4-33-4-2, IC 4-33-4-3, or IC 4-33-4-14.

(18) An emergency rule adopted by the alcohol and tobacco commission under IC 7.1-3-17.5, IC 7.1-3-17.7, or IC 7.1-3-20-24.4.

(19) An emergency rule adopted by the department of financial institutions under IC 28-15-11.

(20) An emergency rule adopted by the office of the secretary of family and social services under IC 12-8-1-12.

(21) An emergency rule adopted by the office of the children's health insurance program under IC 12-17.6-2-11.

(b) The following do not apply to rules described in subsection (a):

(1) Sections 24 through 36 of this chapter.

(2) IC 13-14-9.

(c) After a rule described in subsection (a) has been adopted by the agency, the agency shall submit the rule to the publisher for the assignment of a document control number. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall determine the number of copies of the rule and other documents to be submitted under this subsection.

(d) After the document control number has been assigned, the agency shall submit the rule to the secretary of state for filing. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The secretary of state shall determine the number of copies of the rule and other documents to be submitted under this subsection.

(e) Subject to section 39 of this chapter, the secretary of state shall:

(1) accept the rule for filing; and

(2) file stamp and indicate the date and time that the rule is accepted on every duplicate original copy submitted.

(f) A rule described in subsection (a) takes effect on the latest of the following dates:

(1) The effective date of the statute delegating authority to the agency to adopt the rule.

(2) The date and time that the rule is accepted for filing under subsection (e).

(3) The effective date stated by the adopting agency in the rule.

(4) The date of compliance with every requirement established by law as a prerequisite to the adoption or effectiveness of the rule.

(g) Subject to subsection (h), IC 14-10-2-5, IC 14-22-2-6, and IC 22-8-1.1-16.1, a rule adopted under this section expires not later than ninety (90) days after the rule is accepted for filing under subsection (e). Except for a rule adopted under subsection (a)(14), the rule may be extended by adopting another rule under this section, but only for one (1) extension period. A rule adopted under subsection (a)(14) may be extended for two (2) extension periods. Except for a rule adopted under subsection (a)(14), for a rule adopted under this section to be effective after one (1) extension period, the rule must be adopted under:

(1) sections 24 through 36 of this chapter; or

(2) IC 13-14-9;

as applicable.

(h) A rule described in subsection (a)(6), (a)(9), or (a)(13) expires on the earlier of the following dates:

(1) The expiration date stated by the adopting agency in the rule.

(2) The date that the rule is amended or repealed by a later rule adopted under sections 24 through 36 of this chapter or this section.

(i) This section may not be used to readopt a rule under IC 4-22-2.5.

[As amended by: P.L.204-2001, §6.]

IC 4-22-2-37.1 ------- Administrative rules: temporary emergency rules [Version 2; Effective 1/1/2002]

(a) This section applies to a rulemaking action resulting in any of the following rules:

(1) An order adopted by the commissioner of the Indiana department of transportation under IC 9-20-1-3(d) or IC 9-21-4-7(a) and designated by the commissioner as an emergency rule.

(2) An action taken by the director of the department of natural resources under IC 14-22-2-6(d) or IC 14-22-6-13.

(3) An emergency temporary standard adopted by the occupational safety standards commission under IC 22-8-1.1-16.1.

(4) An emergency rule adopted by the solid waste management board under IC 13-22-2-3 and classifying a waste as hazardous.

(5) A rule, other than a rule described in subdivision (6), adopted by the department of financial institutions under IC 24-4.5-6-107 and declared necessary to meet an emergency.

(6) A rule required under IC 24-4.5-1-106 that is adopted by the department of financial institutions and declared necessary to meet an emergency under IC 24-4.5-6-107.

(7) A rule adopted by the Indiana utility regulatory commission to address an emergency under IC 8-1-2-113.

(8) An emergency rule jointly adopted by the water pollution control board and the budget agency under IC 13-18-13-18.

(9) An emergency rule adopted by the state lottery commission under IC 4-30-3-9.

(10) A rule adopted under IC 16-19-3-5 that the executive board of the state department of health declares is necessary to meet an emergency.

(11) An emergency rule adopted by the Indiana transportation finance authority under IC 8-21-12.

(12) An emergency rule adopted by the insurance commissioner under IC 27-1-23-7.

(13) An emergency rule adopted by the Indiana horse racing commission under IC 4-31-3-9.

(14) An emergency rule adopted by the air pollution control board, the solid waste management board, or the water pollution control board under IC 13-15-4-10(4) or to comply with a deadline required by federal law, provided:

(A) the variance procedures are included in the rules; and

(B) permits or licenses granted during the period the emergency rule is in effect are reviewed after the emergency rule expires.

(15) An emergency rule adopted by the Indiana election commission under IC 3-6-4.1-14.

(16) An emergency rule adopted by the department of natural resources under IC 14-10-2-5.

(17) An emergency rule adopted by the Indiana gaming commission under IC 4-33-4-2, IC 4-33-4-3, or IC 4-33-4-14.

(18) An emergency rule adopted by the alcoholic beverage commission under IC 7.1-3-17.5, IC 7.1-3-17.7, or IC 7.1-3-20-24.4.

(19) An emergency rule adopted by the department of financial institutions under IC 28-15-11.

(20) An emergency rule adopted by the office of the secretary of family and social services under IC 12-8-1-12.

(21) An emergency rule adopted by the office of the children's health insurance program under IC 12-17.6-2-11.

(22) An emergency rule adopted by the office of Medicaid policy and planning under IC 12-15-41-15.

(b) The following do not apply to rules described in subsection (a):

(1) Sections 24 through 36 of this chapter.

(2) IC 13-14-9.

(c) After a rule described in subsection (a) has been adopted by the agency, the agency shall submit the rule to the publisher for the assignment of a document control number. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall determine the number of copies of the rule and other documents to be submitted under this subsection.

(d) After the document control number has been assigned, the agency shall submit the rule to the secretary of state for filing. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The secretary of state shall determine the number of copies of the rule and other documents to be submitted under this subsection.

(e) Subject to section 39 of this chapter, the secretary of state shall:

(1) accept the rule for filing; and

(2) file stamp and indicate the date and time that the rule is accepted on every duplicate original copy submitted.

(f) A rule described in subsection (a) takes effect on the latest of the following dates:

(1) The effective date of the statute delegating authority to the agency to adopt the rule.

(2) The date and time that the rule is accepted for filing under subsection (e).

(3) The effective date stated by the adopting agency in the rule.

(4) The date of compliance with every requirement established by law as a prerequisite to the adoption or effectiveness of the rule.

(g) Subject to subsection (h), IC 14-10-2-5, IC 14-22-2-6, and IC 22-8-1.1-16.1, a rule adopted under this section expires not later than ninety (90) days after the rule is accepted

for filing under subsection (e). Except for a rule adopted under subsection (a)(14), the rule may be extended by adopting another rule under this section, but only for one (1) extension period. A rule adopted under subsection (a)(14) may be extended for two (2) extension periods. Except for a rule adopted under subsection (a)(14), for a rule adopted under this section to be effective after one (1) extension period, the rule must be adopted under:

(1) sections 24 through 36 of this chapter; or

(2) IC 13-14-9;

as applicable.

(h) A rule described in subsection (a)(6), (a)(9), or (a)(13) expires on the earlier of the following dates:

(1) The expiration date stated by the adopting agency in the rule.

(2) The date that the rule is amended or repealed by a later rule adopted under sections 24 through 36 of this chapter or this section.

(i) This section may not be used to readopt a rule under IC 4-22-2.5.

[As amended by: P.L.287-2001, §1.]

IC 4-22-2-37.1 ------- Administrative rules: temporary emergency rules [Version 3; Effective 1/1/2002]]

(a) This section applies to a rulemaking action resulting in any of the following rules:

(1) An order adopted by the commissioner of the Indiana department of transportation under IC 9-20-1-3(d) or IC 9-21-4-7(a) and designated by the commissioner as an emergency rule.

(2) An action taken by the director of the department of natural resources under IC 14-22-2-6(d) or IC 14-22-6-13.

(3) An emergency temporary standard adopted by the occupational safety standards commission under IC 22-8-1.1-16.1.

(4) An emergency rule adopted by the solid waste management board under IC 13-22-2-3 and classifying a waste as hazardous.

(5) A rule, other than a rule described in subdivision (6), adopted by the department of financial institutions under IC 24-4.5-6-107 and declared necessary to meet an emergency.

(6) A rule required under IC 24-4.5-1-106 that is adopted by the department of financial institutions and declared necessary to meet an emergency under IC 24-4.5-6-107.

(7) A rule adopted by the Indiana utility regulatory commission to address an emergency under IC 8-1-2-113.

(8) An emergency rule jointly adopted by the water pollution control board and the budget agency under IC 13-18-13-18.

(9) An emergency rule adopted by the state lottery commission under IC 4-30-3-9.

(10) A rule adopted under IC 16-19-3-5 that the executive board of the state department of health declares is necessary to meet an emergency.

(11) An emergency rule adopted by the Indiana transportation finance authority under IC 8-21-12.

(12) An emergency rule adopted by the insurance commissioner under IC 27-1-23-7.

(13) An emergency rule adopted by the Indiana horse racing commission under IC 4-31-3-9.

(14) An emergency rule adopted by the air pollution control board, the solid waste management board, or the water pollution control board under IC 13-15-4-10(4) or to comply with a deadline required by federal law, provided:

(A) the variance procedures are included in the rules; and

(B) permits or licenses granted during the period the emergency rule is in effect are reviewed after the emergency rule expires.

(15) An emergency rule adopted by the Indiana election commission under IC 3-6-4.1-14.

(16) An emergency rule adopted by the department of natural resources under IC 14-10-2-5.

(17) An emergency rule adopted by the Indiana gaming commission under IC 4-33-4-2, IC 4-33-4-3, or IC 4-33-4-14.

(18) An emergency rule adopted by the alcoholic beverage commission under IC 7.1-3-17.5, IC 7.1-3-17.7, or IC 7.1-3-20-24.4.

(19) An emergency rule adopted by the department of financial institutions under IC 28-15-11.

(20) An emergency rule adopted by the office of the secretary of family and social services under IC 12-8-1-12.

(21) An emergency rule adopted by the office of the children's health insurance program under IC 12-17.6-2-11.

(22) An emergency rule adopted by the office of Medicaid policy and planning under IC 12-17.7-2-6 to implement the uninsured parents program.

(b) The following do not apply to rules described in subsection (a):

(1) Sections 24 through 36 of this chapter.

(2) IC 13-14-9.

(c) After a rule described in subsection (a) has been adopted by the agency, the agency shall submit the rule to the publisher for the assignment of a document control number. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall determine the number of copies of the rule and other documents to be submitted under this subsection.

(d) After the document control number has been assigned, the agency shall submit the rule to the secretary of state for filing. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The secretary of state shall determine the number of copies of the rule and other documents to be submitted under this subsection.

(e) Subject to section 39 of this chapter, the secretary of state shall:

(1) accept the rule for filing; and

(2) file stamp and indicate the date and time that the rule is accepted on every duplicate original copy submitted.

(f) A rule described in subsection (a) takes effect on the latest of the following dates:

(1) The effective date of the statute delegating authority to the agency to adopt the rule.

(2) The date and time that the rule is accepted for filing under subsection (e).

(3) The effective date stated by the adopting agency in the rule.

(4) The date of compliance with every requirement established by law as a prerequisite to the adoption or effectiveness of the rule.

(g) Subject to subsection (h), IC 14-10-2-5, IC 14-22-2-6, and IC 22-8-1.1-16.1, a rule adopted under this section expires not later than ninety (90) days after the rule is accepted for filing under subsection (e). Except for a rule adopted under subsection (a)(14), the rule may be extended by adopting another rule under this section, but only for one (1) extension period. A rule adopted under subsection (a)(14) may be extended for two (2) extension periods. Except for a rule adopted under subsection (a)(14), for a rule adopted under this section to be effective after one (1) extension period, the rule must be adopted under:

(1) sections 24 through 36 of this chapter; or

(2) IC 13-14-9;

as applicable.

(h) A rule described in subsection (a)(6), (a)(9), or (a)(13) expires on the earlier of the following dates:

(1) The expiration date stated by the adopting agency in the rule.

(2) The date that the rule is amended or repealed by a later rule adopted under sections 24 through 36 of this chapter or this section.

(i) This section may not be used to readopt a rule under IC 4-22-2.5.

[As amended by: P.L.283-2001, §1.]

IC 4-22-2-38 --------- Administrative rules: corrections

(a) This section applies to a rulemaking action resulting in any of the following rules:

(1) A rule that brings another rule into conformity with section 20 of this chapter.

(2) A rule that amends another rule to replace an inaccurate reference to a statute, rule, regulation, other text, governmental entity, or location with an accurate reference, when the inaccuracy is the result of the rearrangement of a federal or state statute, rule, or regulation under a different citation number, a federal or state transfer of functions from one (1) governmental entity to another, a change in the name of a federal or state governmental entity, or a change in the address of an entity.

(3) A rule correcting any other typographical, clerical, or spelling error in another rule.

(b) Sections 24 through 37.1 of this chapter do not apply to rules described in subsection (a).

(c) Notwithstanding any other statute, an agency may adopt a rule described by subsection (a) without complying with any statutory notice, hearing, adoption, or approval requirement. In addition, the governor may adopt a rule described in subsection (a) for an agency without the agency's consent or action.

(d) A rule described in subsection (a) shall be submitted to the publisher for the assignment of a document control number. The agency (or the governor, for the agency) shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall determine the number of copies of the rule and other documents to be submitted under this subsection.

(e) After a document control number is assigned, the agency (or the governor, for the agency) shall submit the rule to the secretary of state for filing. The agency (or the governor, for the agency) shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The secretary of state shall determine the number of copies of the rule and other documents to be submitted under this subsection.

(f) Subject to section 39 of this chapter, the secretary of state shall:

(1) accept the rule for filing; and

(2) file stamp and indicate the date and time that it is accepted on every duplicate original copy that is submitted.

(g) Subject to subsection (h), a rule described in subsection (a) takes effect on the latest of the following dates:

(1) The date that the rule being corrected by a rule adopted under this section becomes effective.

(2) The date that is forty-five (45) days from the date and time that the rule adopted under this section is accepted for filing under subsection (f).

(h) The governor or the attorney general may file an objection to a rule that is adopted under this section before the date that is forty-five (45) days from the date and time that the rule is accepted for filing under subsection (f). When filed with the secretary of state, the objection has the effect of invalidating the rule.

[As amended by: P.L.1-1991, §16.]

IC 4-22-2-39 --------- Administrative rules: acceptance of rule for filing by the secretary of state

(a) When an agency submits a rule for filing under section 35, 37.1, or 38 of this chapter, the secretary of state may accept the rule for filing only if the following conditions are met:

(1) A sufficient number of duplicate original copies of the rule are submitted to allow the secretary of state to comply with IC 4-22-7-5.

(2) Each submitted copy includes a reference to the document control number assigned to the rule by the publisher.

(3) Each submitted copy indicates that the agency has conducted its rulemaking action in conformity with all procedures required by law. However, if section 31 of this chapter applies to the rule, the secretary of state shall rely on the approval of the attorney general as the basis for determining that the agency has complied with all procedures required before the date of the approval.

(b) If a rule includes a statement that the rule is not effective until:

(1) an agency has complied with requirements established by the federal or state government;

(2) a specific period of time has elapsed; or

(3) a date has occurred;

the agency has complied with subsection (a)(3) even if the described event or time has not occurred before the secretary of state reviews the rule under this section.

(c) The secretary of state shall take no more than three (3) business days to complete the review of a rule under this section.

[As amended by: P.L.1-1991, §17.]

IC 4-22-2-40 --------- Administrative rules: rule recall, readoption and resubmission

(a) At any time before a rule is accepted for filing by the secretary of state under section 35, 37.1, or 38 of this chapter, the agency that adopted the rule may recall it. A rule may be recalled regardless of whether it has been disapproved by the attorney general under section 32 of this chapter or disapproved by the governor under section 34 of this chapter.

(b) Sections 24 through 38 of this chapter do not apply to a recall action under this section. However, the agency shall distribute a notice of its recall action to the publisher for publication in the Indiana Register. Sections 24 and 26 of this chapter do not apply to a readoption action under subsection (c).

(c) After an agency recalls a rule, the agency may reconsider its adoption action and adopt an identical rule or a revised rule. However, if sections 24 through 36 of this chapter apply to the recalled rule, the readopted rule must comply with the requirements under section 29 of this chapter.

(d) The recall of a rule under this section voids any approval given after the rule was adopted and before the rule was recalled.

(e) If a rule is:

(1) subject to sections 31 and 33 of this chapter;

(2) recalled under subsection (a); and

(3) readopted under subsection (c);

the agency shall resubmit the readopted version of the recalled rule to the attorney general and the governor for approval. The attorney general and the governor have the full statutory period to approve or disapprove the readopted rule. The agency also shall comply with any other applicable approval requirement provided by statute.

(f) The readopted version of a recalled rule is effective only after the agency has complied with section 35, 37.1, or 38 of this chapter.

[As amended by: P.L.12-1993, §4.]

IC 4-22-2-41 --------- Administrative rules: agency withdrawal of rule

(a) At any time before a rule is accepted by the secretary of state for filing under section 35, 37.1, or 38 of this chapter, the agency that adopted the rule may withdraw it.

(b) Sections 24 through 40 of this chapter do not apply to a withdrawal action. However, the withdrawing agency shall distribute a notice of the withdrawal to the publisher for publication in the Indiana Register.

(c) The withdrawal of a rule under this section terminates the rulemaking action, and the withdrawn rule may become effective only through another rulemaking action initiated under this chapter.

[As amended by: P.L.1-1991, §19.]

IC 4-22-2-42 --------- Administrative rules: rules publisher to establish format

The publisher, with the assistance of the code revision commission, shall establish a format, a numbering system, standards, and techniques for agencies to use whenever they draft and prepare rules under this chapter.

[As added by: P.L.31-1985, §31.]

IC 4-22-2-43 --------- Administrative rules: supplemental rules concerning rulemaking procedures

(a) Subject to section 42 of this chapter, the attorney general may adopt rules under this chapter to interpret or implement this chapter.

(b) An agency may adopt rules under this chapter to supplement the procedures in this chapter for its own rulemaking actions.

[As added by: P.L.31-1985, §32.]

IC 4-22-2-44 --------- Administrative rules: nonconforming rulemaking actions invalid

A rulemaking action that does not conform with this chapter is invalid, and a rule that is the subject of a noncomplying rulemaking action does not have the effect of law until it is adopted in conformity with this chapter. However, the failure of an agency to comply with section 20(2) of this chapter does not invalidate the rulemaking action.

[As amended by: P.L.36-1989, §2.]

IC 4-22-2-45 --------- Administrative rules: two year limit on challenges to the validity of environmental rules

A:

(1) claim; or

(2) defense;

that asserts that a rule is invalid on procedural grounds may not be asserted if the claim or defense is based on rulemaking procedures that were followed or should have been followed by a board described in IC 13-14-9-1 or the department in adopting a rule under this chapter unless the claim or defense that asserts the procedural defect is filed not more than two (2) years after the date the rule becomes effective. However, a claim may be filed or a defense raised at any time for an alleged procedural defect that is alleged to have caused substantial harm to the due process rights of an individual.

[As amended by: P.L.1-1996, §33.]

IC 4-22-2-46 --------- Administrative rules: administrative rules oversight committee to review rules with fiscal impact over $500,000

The administrative rules oversight committee shall carry out a program to review each rule adopted under this chapter that has a fiscal impact of more than five hundred thousand dollars ($500,000) for the following:

(1) Economic impact.

(2) Compliance with the intent of the general assembly.

(3) The extent to which the rule creates an unfunded mandate on any state agency or political subdivision.

(4) The extent to which the rule complies with the standards in IC 4-22-2-19.5.

[As amended by: P.L.17-1996, §6.]

IC 4-22-2.5. EXPIRATION AND READOPTION OF ADMINISTRATIVE RULES

IC 4-22-2.5-1 --------- Rule readoption: applicability

This chapter does not apply to the following:

(1) Rules adopted by the department of state revenue.

(2) Rules adopted by the state board of tax commissioners.

(3) Rules adopted under IC 13-14-9 by the department of environmental management or a board that has rulemaking authority under IC 13.

(4) A rule that incorporates a federal regulation by reference or adopts under a federal mandate a federal regulation in its entirety without substantive additions.

[As added by: P.L.17-1996, §7.]

IC 4-22-7. CODIFICATION, DISTRIBUTION AND PUBLICATION OF RULES AND OTHER AGENCY STATEMENTS

IC 4-22-7-6 ---------- Publication of rules and other agency statements: agency may publish rules

An agency may publish its rules under IC 4-13-4.1. A publication containing rules also may include other matter that may assist the public in conducting its business with the agency.

[As added by: P.L.31-1985, §34.]

IC 4-22-7-7 ---------- Publication of rules and other agency statements: publication in the Indiana Register

(a) This section applies to the following agency statements:

(1) Executive orders issued by the governor.

(2) Notices that a rule has been disapproved or objected to by the attorney general under IC 4-22-2-32 or IC 4-22-2-38, or disapproved or objected to by the governor under IC 4-22-2-34 or IC 4-22-2-38.

(3) Official opinions of the attorney general (excluding advisory letters).

(4) Official explanatory opinions of the state board of accounts based on an official opinion of the attorney general.

(5) Any other statement:

(A) that:

(i) interprets, supplements, or implements a statute or rule;

(ii) has not been adopted in compliance with IC 4-22-2;

(iii) is not intended by its issuing agency to have the effect of law; and

(iv) may be used in conducting the agency's external affairs; or

(B) that specifies a policy that an agency relies upon to:

(i) enforce a statute or rule;

(ii) conduct an audit or investigation to determine compliance with a statute or rule; or

(iii) impose a sanction for violation of a statute or rule.

This subdivision includes information bulletins, revenue rulings (including, subject to IC 6-8.1-3-3.5, a letter of findings), and other guidelines of an agency.

(6) A statement of the governor concerning extension of an approval period under IC 4-22-2-34.

(b) Whenever an agency adopts a statement described by subsection (a), the agency shall distribute two (2) duplicate copies of the statement to the publisher for publication and indexing in the Indiana Register and the copies required by IC 4-23-7.1-26 to the Indiana library and historical department. However, if a statement under subsection (a)(5)(B) is in the form of a manual, book, pamphlet, or reference publication, the publisher is required to publish only the title of the manual, book, or reference publication.

(c) Every agency that adopts a statement described under subsection (a) also shall maintain a current list of all agency statements described in subsection (a) that it may use in its external affairs. The agency shall update the listing at least every thirty (30) days. The agency shall include on the list the name of the agency and the following information for each statement:

(1) Title.

(2) Identification number.

(3) Date originally adopted.

(4) Date of last revision.

(5) Reference to all other statements described in subsection (a) that are repealed or amended by the statement.

(6) Brief description of the subject matter of the statement.

(d) At least quarterly, every agency that maintains a list under subsection (c) shall distribute two (2) copies of the list to the publisher and two (2) copies to the Indiana library and historical department and the administrative rules oversight committee.

[As amended by: P.L.28-1997, §1.]

IC 4-23-5.5. INDIANA RECYCLING AND ENERGY DEVELOPMENT BOARD

IC 4-23-5.5-1 --------- Recycling/energy development board: definitions

As used in this chapter:

(1) "board" means the Indiana recycling and energy development board created by this chapter;

(2) "department" means the department of commerce; and

(3) "director" refers to the director of the office of energy policy of the department.

[As amended by: P.L.27-1993, §7.]

IC 4-23-5.5-2 --------- Recycling/energy development board: established

(a) The Indiana recycling and energy development board is created and constitutes a public instrumentality of the state. The exercise by the board of the powers conferred by this chapter is an essential governmental function.

(b) The board consists of thirteen (13) members, one (1) of whom shall be the lieutenant governor or the lieutenant governor's designee and twelve (12) of whom shall be appointed by the governor for four (4) year terms. The governor's appointees shall be chosen from among representatives of:

(1) the coal industry;

(2) other regulated and nonregulated energy related industries;

(3) Indiana universities and colleges with expertise in:

(A) recycling research and development; or

(B) energy research and development;

(4) agriculture;

(5) labor;

(6) industrial and commercial consumers;

(7) environmental groups; and

(8) private citizens with a special interest in:

(A) recycling; or

(B) energy resources development.

No more than six (6) appointive members shall be of the same political party.

(c) A vacancy in the office of an appointive member, other than by expiration, shall be filled in like manner as the original appointment for the remainder of the term of that retiring member. Appointed members may be removed by the governor for cause.

(d) The board shall have eight (8) ex officio advisory members as follows:

(1) The governor.

(2) The director of the office of energy policy of the department.

(3) The director of the department of natural resources.

(4) The commissioner of the department of environmental management.

(5) Two (2) members from the house of representatives of opposite political parties appointed by the speaker of the house of representatives for two (2) year terms.

(6) Two (2) members from the senate of opposite political parties appointed by the president pro tempore of the senate for two (2) year terms.

(e) The department shall serve as the staff of the board.

[As amended by: P.L.27-1993, §8.]

IC 4-23-5.5-3 --------- Recycling/energy development board: chairman; quorum; expenses

(a) The governor shall appoint one (1) of the appointed members as chairman. Seven (7) members of the board shall constitute a quorum and the affirmative vote of a majority of the membership shall be necessary for any action taken by the board. A vacancy in the membership of the board does not impair the right of the quorum to act.

(b) All the members of the board shall be reimbursed for their actual expenses incurred in the performance of their duties. The appointed members may also receive a per diem allowance as determined by the budget agency for attendance of board meetings and activities. All reimbursement for expenses shall be as provided by law.

[As amended by: P.L.10-1990, §5; P.L.27-1993, SEC.9.]

IC 4-23-5.5-4 --------- Recycling/energy development board: staffing

The director shall be the chief administrative officer for the board and shall direct and supervise the administrative affairs and technical activities of the board in accordance with rules, regulations, and policies established by the board. The director may appoint such employees as the board may require and such agents or consultants as may be necessary for implementing this chapter. The director shall prepare an annual administrative budget for review by the budget agency and the budget committee.

[As amended by: P.L.27-1993, §10.]

IC 4-23-5.5-5 --------- Recycling/energy development board: disclosure of interests

A member of the board must disclose to the board any interest in a project the board may be considering for action. The board shall determine whether that member shall be allowed to participate in activities related to that project.

[As added by: ACTS 1980, P.L.20, §1.]

IC 4-23-5.5-6 --------- Recycling/energy development board: responsibilities of board

(a) The board shall do the following:

(1) Adopt procedures for the regulation of its affairs and the conduct of its business.

(2) Meet at the offices of the department on call of the director, at least once each calendar quarter. The meetings shall be upon ten (10) days written notification, shall be open to the public, and shall have official minutes recorded for public scrutiny.

(3) Report annually to the legislative council the projects in which it has participated and is currently participating with a complete list of expenditures for those projects.

(4) Annually prepare an administrative budget for review by the budget agency and the budget committee.

(5) Keep proper records of accounts and make an annual report of its condition to the state board of accounts.

(b) The board may request that the department conduct assessments of the opportunities and constraints presented by all sources of energy. The board shall encourage the balanced use of all sources of energy with primary emphasis on:

(1) the utilization of Indiana's high sulphur coal; and

(2) the utilization of Indiana's agricultural and forest resources and products for the production of alcohol fuel.

However, the board shall seek to avoid possible undesirable consequences of total reliance on a single source of energy.

(c) The board shall consider projects involving the creation of the following:

(1) Markets for products made from recycled materials.

(2) New products made from recycled materials.

(d) The board may promote, fund, and encourage programs facilitating the development and effective use of all sources of energy in Indiana.

[As amended by: P.L.27-1993, §11.]

IC 4-23-5.5-7 --------- Recycling/energy development board: authorized expenditures

The board, upon approval by the governor and the budget agency, may make the following expenditures:

(1) Matching grants to federal, state, and local governmental agencies for research and development of energy resources projects and recycling market development projects in Indiana.

(2) Matching grants to individuals, corporations, limited liability companies, partnerships, educational institutions, and other private sector groups for energy resources and recycling market research and development.

(3) Direct grants, loans, or loan guarantees to those individuals and organizations specified in subdivision (1) or (2) of this section.

(4) Contractual services for energy resources and recycling market research and development programs.

(5) Purchase or lease land for energy resources and recycling market research and development projects.

(6) Other projects and expenses consistent with this chapter.

[As amended by: P.L.1-1994, §11.]

IC 4-23-5.5-8 --------- Recycling/energy development board: no eminent domain authority

The board does not have the authority to exercise the power of eminent domain.

[As added by: ACTS 1980, P.L.20, §1.]

IC 4-23-5.5-9 --------- Recycling/energy development board: powers of board

The board may:

(1) on behalf of the state receive and accept grants, gifts, and contributions from public agencies, including the federal government, and from private agencies and private sources, including the Indiana business modernization and technology corporation, for the purpose of researching and developing energy resources within the state, and may administer such, including contracting with other public and private organizations, to carry out the purposes for which such grants, gifts, and contributions were made;

(2) establish application forms and procedures for programs consistent with this chapter;

(3) accept applications from private and public sources for funding of programs consistent with this chapter;

(4) provide funding for studies, research projects, and other activities required to assess the nature and extent of recycling markets in Indiana and the nature and extent of energy resources to meet the needs of the state, including but not limited to coal and other fossil fuels, alcohol fuels produced from agricultural and forest products and resources, renewable, and other energy resources;

(5) deposit funds not currently needed to meet the obligations of the board with the treasurer of state to the credit of the fund, or invest in obligations as provided by IC 5-13-10.5; and

(6) participate in or sponsor programs, conferences, or seminars aimed at assisting the state in promoting recycling market development and the effective use of all sources of energy in Indiana.

[As amended by: P.L.18-1996, §1.]

IC 4-23-5.5-10 ------- Recycling/energy development board: energy development fund established

(a) The "energy development fund" is established as a dedicated fund to be administered by the board. Money in the fund shall be expended by the board exclusively to effect the provisions of this chapter and may include administrative costs.

(b) All money received by the board for deposit in the energy development fund shall be deposited in the fund.

(c) No portion of the fund shall revert to the general fund of the state at the end of a fiscal year. However, if the fund is abolished its contents shall revert to the general fund of the state.

(d) All money accruing to the fund is appropriated continuously for the purposes specified in this chapter.

[As amended by: P.L.27-1993, §14.]

IC 4-23-5.5-11 ------- Recycling/energy development board: revolving loan program authorized

The board may establish and administer a revolving loan program for the purpose of making low interest loans to projects designed to promote the development and efficient use of energy resources or to promote recycling market development. The interest rates for the loans shall be fixed by the board.

[As amended by: P.L.27-1993, §15.]

IC 4-23-5.5-14 ------- Recycling/energy development board: recycling promotion and assistance fund established

(a) The Indiana recycling promotion and assistance fund is established. The purpose of the fund is to promote and assist recycling throughout Indiana by focusing economic development efforts on businesses and projects involving recycling. The fund shall be administered by the board.

(b) Sources of money for the fund consist of the following:

(1) Appropriations from the general assembly.

(2) Repayment proceeds of loans made from the fund.

(3) Gifts and donations.

(4) Money from the solid waste management fund.

(c) Money remaining in the fund at the end of a state fiscal year does not revert to the state general fund.

(d) The board may use money in the fund to make loans to assist:

(1) persons in establishing new recycling businesses;

(2) in the expansion of existing recycling businesses; and

(3) manufacturers in retrofitting equipment necessary to reuse or recycle secondary materials.

(e) The board shall establish loan:

(1) amounts;

(2) terms; and

(3) interest rates.

(f) The board may use money in the fund to make grants for research and development projects involving recycling. The board shall establish amounts for grants.

(g) A person, business, or manufacturer that wants a grant or loan from the fund must file an application with the board.

(h) The board shall establish criteria for awarding grants and loans under this section.

[As added by: P.L.10-1990, §9.]

IC 4-23-5.5-15 ------- Recycling/energy development board: energy efficiency loan fund established

(a) The Indiana energy efficiency loan fund is established for the purpose of assisting Indiana industries and governing bodies (as defined in IC 36-1-12.5-1.5) in undertaking energy efficiency projects. The fund shall be administered by the board.

(b) Sources of money for the fund consist of the following:

(1) Appropriations from the general assembly.

(2) Repayment proceeds, including interest, of loans made from the fund.

(3) Donations, gifts, and money received from any other source, including transfers from other funds or accounts.

(c) Money remaining in the fund at the end of a state fiscal year does not revert to the state general fund.

(d) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund.

(e) The board shall establish:

(1) amounts, terms, and interest rates for loans under this section; and

(2) criteria for awarding loans under this section.

(f) A person, business, governing body, or manufacturer that wants a loan from the fund must file an application in the manner prescribed by the board.

[As amended by: P.L.227-1999, §11.]

IC 4-23-5.5-16 ------- Recycling/energy development board: Indiana coal research fund established

(a) The Indiana coal research grant fund is established for the purpose of providing grants for research and other projects designed to develop and expand markets for Indiana coal. The fund shall be administered by the board.

(b) Sources of money for the fund consist of the following:

(1) Appropriations from the general assembly.

(2) Donations, gifts, and money received from any other source, including transfers from other funds or accounts.

(c) Money remaining in the fund at the end of a state fiscal year does not revert to the state general fund.

(d) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund.

(e) The board shall establish:

(1) amounts for grants under this section; and

(2) criteria for awarding grants under this section.

(f) A person, business, or manufacturer that wants a grant from the fund must file an application in the manner prescribed by the board.

[As added by: P.L.24-1993, §3.]